

HAS THE U.N. COMMISSION ON HUMAN RIGHTS  
LOST ITS COURSE? A REVIEW OF ITS MISSION,  
OPERATIONS, AND STRUCTURE

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON  
INTERNATIONAL OPERATIONS AND HUMAN RIGHTS  
OF THE  
COMMITTEE ON  
INTERNATIONAL RELATIONS  
HOUSE OF REPRESENTATIVES  
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**HAS THE U.N. COMMISSION ON HUMAN  
RIGHTS LOST ITS COURSE?  
A REVIEW OF ITS MISSION, OPERATIONS,  
AND STRUCTURE**

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**WEDNESDAY, JUNE 6, 2001**

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON INTERNATIONAL  
OPERATIONS AND HUMAN RIGHTS,  
COMMITTEE ON INTERNATIONAL RELATIONS,  
*Washington, DC.*

The Subcommittee met, pursuant to call, at 2:05 p.m. In Room 2200, Rayburn House Office Building, Hon. Ileana Ros-Lehtinen [Chairman of the Subcommittee] presiding.

Ms. ROS-LEHTINEN. The Subcommittee will come to order. Thank you very much.

When the United Nations Commission on Human Rights was established in 1947, the United States and the world had just witnessed one of the darkest periods in recent history—a period when the commitment of the allied nations to the defense of human rights was tried and tested by a man whose ruthless and heinous acts defied any definition of humanity.

This experience left an indelible mark on the American consciousness and strengthened U.S. Resolve. Since then, the United States has been without equal in articulating a vision of international human rights and in exercising the will and ability to carry it out, so that the principles outlined in the Universal Declaration of Human Rights have become a reality for all.

The U.S. commitment is enduring and will not be affected by its recent ouster from the United Nations Commission on Human Rights. As President Bush said on May 20 of this year, “Repressed people around the world must know this about the United States, we might not sit on some commission, but we will always be the world’s leader in support of human rights.”

Nevertheless, the vote which took place on May 3 will have an impact on U.S. capabilities and options in promoting democracy and human rights—the extent of which remains to be seen.

Without the U.S. as a full participatory member of the Commission, are the oppressed left to depend on the European Union countries to defend their interests? Given the conciliatory approach of Europeans toward such pariah states as Iran, Libya, Sudan, China and Cuba, will they condemn repressive regimes and hold them accountable for their crimes?

Will the Commission become irrelevant? Will it simply become a tool for gross violators to act with impunity and legitimize their reigns.

If the U.S. is to minimize the corrosive effect and protect the integrity of the Commission so it can persist as a tool of justice and righteousness, not of oppression and subjugation, we must decipher the root causes of the anti-U.S. sentiment which permeated through this year's session. We must determine the compendium of factors affecting the work of the Commission and seek recommendations on a U.S. course of action.

The Administration is conducting a policy review and is looking closely at new approaches, new opportunities and tactics that will enable the U.S. to continue to aggressively pursue its human rights objectives worldwide. We hope that our State Department witnesses will discuss some of these during today's statements.

Having led a congressional delegation to this year's 57th session of the Commission on Human Rights, I was able to witness first-hand some of the trends that are undermining the integrity and the effectiveness of the Commission and have outlined them in my findings. Some of the issues I raised and discussed were recognized by Ambassador Jacob Selebi on April 24, 1998, when he served as the Chairman of the 54th session of the Commission. At that time, the Ambassador underscored the continuing persecution of human rights defenders, the group solidarity hindering scrutiny of some human rights situations, the countries' lack of cooperation in Commission investigations.

As a result, I would like to propose that U.S. efforts include a coordinated campaign to press for institutional reforms at the Commission, such as ineligibility of countries whose governments have been censured or criticized by the Commission for persistent human rights violations; also eliminating secret ballots, eliminating or reorganizing the regional and subregional blocs and quota slots which favor dictatorships over democracies; and reverse the dominant culture requiring that resolutions be passed by consensus.

We realize that there was not much enthusiasm about an amendment to the State Department authorization bill passed by the House linking the payment of our United Nations arrears to the return of the U.S. to the Human Rights Commission. However, some would highlight that in recent years linking of such arrears to the reforms in the U.N. as a whole has led to some much-needed changes in the U.N. system and U.N. management. They would add that the linking of U.N. arrears to reforms in the Commission should at the very least be given due consideration as the U.S. devises a strategy to address the problems plaguing the U.N. Commission on Human Rights.

Others, however, argue that it would set a bad precedent for other countries in the future that they are going to withhold their funding. They add that it would further fuel the anti-U.S. sentiment which led to our ouster.

What other options are available to us in the U.S. to generate support and create the political will to move forward on such reforms? In order to effectively evaluate these issues, today's hearing will focus on the criteria for membership, on the selection process, on the relationship between the Commission and its governing

body, as well as its mission and scope. The latter issue—that is, the manipulation of the agenda and the operations of the Commission—is an issue of increasing concern.

First, the lobbying efforts of oppressive regimes has become much more sophisticated. For instance, the Chinese leader and the Cuban foreign minister traveled this year to member countries of the Commission just prior to votes on resolutions concerning the human rights abuses by their regimes. They offered cooperative agreements, trade deals and all kinds of incentives to carry favor with these governments. The message was clear that those who did not follow the script would suffer the consequences.

For years, China has been able to avoid a discussion on its systemic violation of all the individual, religious, civil and political rights of its people by coercive means. Similar tactics were used by the Sudanese regime to secure its selection as a member of the Commission for next year's session. Unfortunately, these methods are not only effective with other tyrants and repressive governments, but some will underscore that they have been used effectively to co-op democracies as well.

Another concern regarding the agenda of the Commission are efforts from members to divert attention from the universal rights which are the crux of the Commission. There are attempts to "legislate" on "right to development," specifically in such areas as right to work, wages, housing and other economic issues.

Several members of the U.S. Delegation have pointed to a "right to development" resolution introduced by the nonaligned movement at the 57th session as one of the numerous examples of how the Commission's work and agenda are being distorted. The resolution offered by the nonaligned movement names, among other obstacles to development, the existing intellectual property rights regimes and other impediments to the unlimited transfer of technology.

Lastly, this hearing will address the role of NGOs and how violator countries are using the NGO process to manipulate the agenda. Oppressive regimes are funding and securing approval for government-sanctioned and government-selected groups credentialed as NGOs, but which are actually promoting the regimes' agendas. They are creating coalitions to remove legitimate human rights groups who are critical of their poor human rights records.

For example, after Freedom House arranged a press conference with Chinese democracy activists during last year's session, China, with the support of the Sudanese and the Cuban regimes, brought proceedings against Freedom House to bar it from participating at future sessions. At this year's 57th session, the Cuban regime filed formal complaints against Freedom House for, among other things, its increasing efforts to bring former dissident leaders from former Eastern bloc countries to meet with human right dissidents and political opposition leaders in Cuba.

The U.S. must be prepared to counter these efforts. It must continue to do what is right and what is just. It must continue to lead and fight for the rights endowed to all human beings, and we hope that this hearing will provide the necessary tools to continue this critical mission.

And with this, I would like to turn it over to our Ranking Member, Congresswoman Cynthia McKinney of Georgia.

Ms. MCKINNEY. Thank you, Madam Chair.

We are here today to question whether or not the United Nations Commission on Human Rights has lost its course. Too many times I have found myself bound by conscience to speak out against the United Nations and the countries that set its policy. Too many times those policies with which I have been forced to disagree, sadly, have been set by Washington, DC. The fact that Argentina and France have both issued subpoenas for the attendance in court of former Secretary of State Henry Kissinger for the U.S. role in the murder and disappearance of their citizens is only a harbinger of things to come.

As a matter of policy, our government seems to have routinely done to the poor and people of color abroad what it has done to the poor and people of color at home. We know too little about decisions that were made in the name of the United States—decisions that were made for me and for you, yet are now shaken off as merely responses to the Cold War, decisions that in some instances led to the overthrow of elected governments, but in all instances, to U.S. support of heinous dictatorships with U.S. taxpayer dollars, like in Indonesia, South Korea, Argentina, Chili, Guatemala, Ghana and Congo-Zaire.

The Panafican News Agency cites a report on an alleged plan by the U.S. and other European countries to dump approximately 29 tons of toxic waste in 11 African countries. The materials dumped included industrial and chemical wastes, pesticide sludge, radioactive waste, as well as other hazardous materials.

I ask you, how can this country dump toxic waste on the poor and consider themselves to be a champion of human rights across the globe?

On the U.S. Defense Intelligence Agency Web site is a document uncovered by Professor Thomas Noggi which discusses how allied forces could block efforts to purify contaminated water, leading to the full degradation of the Iraqi water treatment system within 6 months. Attacking the Iraqi public water supply flagrantly targets civilians and is a violation of the Geneva Convention and of the fundamental laws of civilized nations.

In contravention of even our own laws, U.S. weapons are used around the world in human rights abuses as states suppress their own people or their neighbors. Only a few days ago, Dick Cheney stated that Israel should stop using U.S. built F-16 warplanes against Palestinian targets.

In its conduct of foreign policy, my government has not always taken the high road. The actions launched against Henry Kissinger suggest that other countries will no longer tolerate the failure of the United States to consider human rights in its actions abroad.

But human rights is not only about foreign policy; human rights is about domestic policy too. When we in this country talk about "human rights," those words are usually intoned with an outward vision. We speak about human rights around the world. However, today, for just a few moments, I want to talk about human rights at home.

On too many occasions, blacks in the United States have felt compelled to step outside of the political and judicial system in this country and appeal to the global community on behalf of the pres-



tures on their human rights. On too many occasions, the United States has failed to protect the human rights of black Americans. And until this issue is addressed and addressed appropriately, when we speak to others about the failures of their human rights, they see hypocrisy dripping from our lips as we berate them about the treatment of their citizens.

In 1947, at the dawn of the United Nations organization, W.E.B. Du Bois registered the U.N.'s first such complaint in an address entitled "Petition on Behalf of Negroes." Julian Bond, Chairman of the Board of the NAACP, along with dozens of civil rights groups and activists during the U.N.'s Jubilee Conference, recognized the need still to petition on behalf of blacks suffering in the United States today.

Then, in 1951, Paul Robeson returned to the United Nations with the first call for reparations called—we call "genocide"—demanding compensatory damages over the slave trade.

In 1967, in response to approximately 150 uprisings, which some chose to calling "riots," in this country, the United States Government called on a national commission to conduct a study to determine the cause of this phenomenon and how to prevent it from continuing. The resulting report is popularly known as the Kerner report, which stated that the cause of these uprisings and disturbances was white racism, "racism" being defined as a belief that race is the primary determinant of human traits and capacities and that racial differences produce an inherent superiority of a particular race.

One of the recommendations resulting from this report was that the United States Government needed highly trained intelligence officers to counter the effects or continuance of these uprisings. In the FBI's own words, its counterintelligence program, then known as COINTELPRO, had as a goal, and I quote, "to expose disrupt, misdirect, discredit or otherwise neutralize the activities of black organizations and to prevent black leaders from gaining respectability."

Why is it that today, in 2001, I can read a headline that states "Citizens Group Sues Pentagon for the Release of Surveillance Files on the Assassination of Dr. Martin Luther King, Jr."? What does our Pentagon have to hide?

Madam Chair, let me be clear when I say racism in this country is a human rights issue. It is an issue that has permeated every crack and crevice of your society from the playgrounds to the highest levels of our government. Today, black Federal employees have filed discrimination lawsuits against the Departments of Agriculture, Energy, State, Treasury and EPA. Swift and commendable action on the part of then-Secretary of Education Richard Riley prevented a full-blown demonstration on the part of that department's black employees.

If blacks inside the government receive such treatment, how do we think blacks outside the government are being treated? I will tell you. Our Department of Justice admits that blacks are more likely than whites to be pulled over by police, imprisoned and put to death; and though blacks and whites have about the same rate of drug use, blacks are more likely to be arrested than whites and are more likely to receive longer prison sentences than whites.

Government studies on health disparities confirm that blacks are less likely to receive surgery, transplants and prescription drugs than whites, physicians are less likely to prescribe appropriate treatment for blacks than for whites, and black scientists, physicians and institutions are shut out of the funding stream to prevent or change this. A black baby boy born today in Harlem has less chance of reaching age five than a baby born in Bangladesh.

I watch every year as the Congressional Black Caucus shrinks while important sections of the Voting Rights Act will soon expire. Quite frankly, after crippling Supreme Court decisions, there is not much left of affirmative action to mend.

Madam Chair, I ask you, how can a country built on the fundamental belief that all people have an inherent right to life, liberty and the pursuit of happiness stand by and allow its own citizens to be subjected to such dehumanizing conditions?

From August 31 to September 7 of this year, the United Nations will host the World Conference Against Racism, Racial Discrimination, Xenophobia and Racial Intolerance in South Africa. The United States and Britain don't want to talk about slavery and its vestiges; Africans and African Americans do. Even as British streets light up with Asian rage, Britain and the United States would rather not talk about racism.

Recently Human Rights Watch stated that the United States being voted out of the U.N. Commission on Human Rights is a sign that people are watching the U.S. very closely. It is my belief that people are indeed watching, and we certainly cannot and will not continue to command respect across the world on this issue if we do not attend to our human rights here at home.

Bobby Kennedy said that we used to be a force for good in the world, and indeed we were. But what has gone wrong? On D-Day, June 6, when freedom was brought to Europe, we have been thrown off the U.N. human rights body. I hope this panel today can help to tell me what's gone wrong and what we can do to return to our international standing.

Thank you, Madam Chair.

Ms. ROS-LEHTINEN. Thank you, Ms. McKinney.

Mr. Lantos.

Mr. LANTOS. Thank you very much, Madam Chair. And I want to apologize in advance. I am in another Committee hearing that expects my presence, but I want to come in because of the importance of the subject matter of this hearing.

I think it is important to recognize in dealing with the action of the U.N. Human Rights Commission and the failure, for the first time since 1947, of the United States not to have been elected a member of the Commission, to understand what we are dealing with. Clearly, what we are dealing with is not the range of issues my good friend from Georgia has outlined so eloquently. We all understand that the United States is a long way from being a perfect society. But as one who has spent a lifetime studying human rights and fighting for human rights, there is little doubt in my mind that on a comparative scale, the United States is by far the most important and most effective champion of human rights globally; and it is this position of the United States which in large measure was

responsible for our not having been elected to the U.N. Human Rights Commission.

I would like to raise some fundamental issues that played a role in this outcome, which in many ways brings us face-to-face with some very disturbing realities. I think the superficial explanations that have been offered since the event, such as the failure of the U.S. Department of State in effectively advocating our case, upon examination have to be found wanting. It was clearly not the presence or absence of an appropriately designated and confirmed U.S. Ambassador to the U.N. that was the cause of this action. Nor was it a failure of the transition from a Democratic- to a Republican-controlled government which explains this act.

The causes are elsewhere, and I want to deal basically with two of them.

The first one relates to this remarkable phenomenon with deep Orwellian qualities, deep Kafkaesque qualities, which show the U.N. Human Rights Commission is increasingly being populated by some of the worst, most appalling, most disgusting, most persistent violators of human rights. The list is well known. It ranges from Cuba, China, Syria, Iran; and, with the growing sophistication of these assorted dictatorships, we clearly and inexorably are moving in the direction that the U.N. Human Rights Commission might, in fact, make itself a meaningless entity, and our presence on it or our failure to participate in it might make very little difference.

When Chairman Hyde and I introduced our resolution making the final payments of our dues to the U.N. contingent upon our being elected at the next session as members of the U.N. Human Rights Commission, we really expressed perhaps an unduly optimistic view that it makes much difference whether we are members of the U.N. Human Rights Commission or not, because as the Commission makes itself irrelevant, U.S. participation becomes almost equally irrelevant. And it was probably our youthful enthusiasm which carried us to the point of providing an avenue back for the United States to become again a member of the U.N. Human Rights Commission.

If a person would visit from the moon and would look at these bloody violators of human rights, countries like Sudan, which excels in slaveholding in the 21st century, sitting in judgment of political democracies like the state of Israel, the absurdity of the U.N. Human Rights Commission becomes clear to everybody.

But I don't think it was just the most vicious violators of human rights which conspire against us—in the case of China with the crudest methods of intimidation and bribery—but I think some of the responsibility must rest with our West European allies. If one strips away all the sophistry, where we are with respect to Western Europe on this issue is very simple.

Since the majority of U.N. members, or close to a majority of U.N. members, are violators of human rights in varying degrees, it is self-evident that votes will be received by countries which are least articulate in denouncing human rights violation. China will rest assured that Austria will not lead the parade against the outrageous persecution of the Falun Gong or the continued suppression of the people of Tibet.

So the fact that the most articulate proponent of human rights gets the least number of votes in getting on the Commission makes awfully good sense. If you were prime minister of a totalitarian police state, engaging in human rights violations, you would direct your delegate to vote for the least disturbing, least menacing, least articulate countries who will leave you alone. The last country you would want to vote for is the United States of America, which clearly will lead the fight for human rights whether it is in the case of Iran or Iraq or Libya or Cuba or China or the Sudan.

I predict, which is a very safe prediction, that if our Western European friends again will put us in a position of being a contender for votes in a situation where the number of candidates exceeds the number of places, every single time we will lose. It will make sense for human rights violators to prefer Austria to the United States on the Commission.

Therefore, next time this issue emerges, I think it is important for us to have a very serious conversation with our European friends and allies and make it clear to them that we indeed insist on having no more than three candidates for the three spots, that we wish to be one of those candidates, and if we are not, we will take appropriate action, perhaps comparable to the one that the Hyde-Lantos resolution calls for in this instance.

Now—now, perhaps the most intriguing aspect of a new development at the Commission is the fabrication of phony NGOs. This is a—this is a Machiavellian, an Orwellian development, police states, dictatorships creating their own NGOs, who then try to conspire to keep out bona fide NGOs that have devoted years and decades to fighting for human rights.

Freedom House is perhaps the most recent victim of this effort, but there are others and there will be many more. We are going through a rough patch with respect to human rights globally, and this phenomenon at the U.N. is just one manifestation of it.

The voice of the United States will be heard on human rights issues whether we are a member of the U.N. Human Rights Commission or not, we have plenty of other instrumentalities, including, of course, the annual human rights report issued by our State Department. That fact alone will make every single human rights violator want to vote against us, that every year an objective record displays before the world, indicating with remarkable accuracy, the degree to which human rights are violated in scores of countries across the globe.

So I want to commend you, Madam Chairman, for holding this hearing. I want to associate myself with your opening remarks, which are powerful and eloquent; and I merely want to reassure my colleagues that while it was interesting to observe that the number one champion globally of human rights is not allowed to serve on the U.N. Human Rights Commission, it is important for us to keep our perspective. Our fight for human rights will go on, on the Commission or off the Commission, but with a great degree of commitment to human rights principles.

Thank you very much.

Ms. ROS-LEHTINEN. Thank you so much, Mr. Lantos.

I am pleased to introduce the person who went with us to Geneva on this latest round of the Human Rights Commission, Mr. Chris Smith of New Jersey.

Mr. SMITH. Thank you very much, Madam Chairwoman. It was a real privilege to be part of a delegation that you led to speak out to various delegations. We met with at least 21 delegations while we were in Geneva, and I think everyone should know you did a superb job not in only framing the issues, but working with the Administration so closely to try to persuade them.

And as you know so well, there was some success; the Cuban resolution did pass, and I think the Administration did pull out all the stops. It would be an outrage to have Castro and his barbaric behavior go unrecognized by the U.N. Human Rights Commission, flawed as it is, but for the Commission to do even that I think was a major victory, and you played a very real part in that.

I also just want to say—would ask, Madam Chairwoman, that an excellent piece written by Nina Shea, who has done yeoman work on religious freedom in Sudan and who was one of our key leaders in Geneva, that her statement be made a part of the record.

Ms. ROS-LEHTINEN. Without objection.

[The information referred to follows:]

# Europe vs. Human Rights

Why the United States got thrown off the U.N. Human Rights Commission. BY NINA SHEA

**A**MERICANS WERE SHOCKED when our European allies took the lead in ousting us from the United Nations Human Rights Commission early this month. Having served as a member of the U.S. delegation at the recently concluded annual session of the commission, I was less surprised. Contrary to reports in the media, the ouster was not a reaction to American "unilateralism" on issues such as missile defense and global warming. Rather, the Europeans' action reflects the abandonment of their historical commitment to human rights.

Whereas in the past, the Western European delegations were in the forefront of the commission's work, highlighting injustices in South Africa, East Timor, and Bosnia, they now resort to euphemisms and half-truths. The United States stands virtually alone in striving to focus world attention on actual violations of human rights. Repeatedly at the commission, the United States has had to break with the European Union in order to vote its conscience on issues like slavery in Sudan, religious persecution in China, and political repression in Cuba. The United States often stands alone, too, in opposing blatantly political condemnations of Israel. The loss of its seat on the commission is meant to punish the United States for marching out of step.

For the fact is, the United States is deeply resented, not only by the despotic regimes that pack the commission—the likes of Libya, Algeria, Cuba, Syria, and Vietnam—but also

by our European Union allies, who dislike being forced to vote in public on measures censuring countries with which they hope to conclude trade deals. It was the Europeans who flouted the settled practice by which one of the three "Western Group" seats on the commission is reserved for the United States. When France, Austria, and Sweden all insisted on competing for seats this year, they forced the Economic and Social Council, which oversees the commission, to resolve the matter by secret ballot. Newspaper editorials from Copenhagen to Madrid are expressing satisfaction with the American ouster, sneering that go-it-alone U.S. behavior in international forums represents "boorish" isolationism. A European ambassador confidently told me that in a few years there will be no more "finger-pointing" on the Human Rights Commission.

If the United States is to win back its seat in 2002 and prove him wrong, it will need to develop a strategy for reversing four trends that are hastening the commission's decline into irrelevancy.

\* First, a new dominant culture requires that the commission pass its resolution by consensus. The Europeans favor this, as do states with poor records on human rights. Consensus politics means that Sudan, say, gets to help draft the resolution censuring itself. The Khartoum government, which Secretary of State Colin Powell recently called "the biggest single abuser of human rights on Earth," thus was able to have removed from the latest resolution all mention of slavery—even though the commission's rapporteurs have documented the involvement of Khar-

toum's militias in the practice of slavery in seven consecutive annual reports. The European Union-sponsored resolution on Sudan was so weak that the United States was forced to abstain and make a statement of protest.

\* Second, the commission—like many a U.N. forum—frowns on the practice of naming violators of human rights in open debate. Under an unwritten understanding supported by the EU, the proceedings follow a 19-point "thematic" agenda, and under only one of these themes is it deemed permissible to mention countries by name. (The lone exception: Israel may be criticized at any time. During the recent six-week session, the commission adopted five resolutions censuring Israel, over U.S. objections.)

The United States refuses to go along with this. Thus, during the discussion of "human rights defenders," American delegates mentioned case after case of particular defense lawyers, journalists, clergy, and other human rights activists in specified countries who have been imprisoned or murdered for their work. In contrast, speaking for the EU, the Swedish ambassador addressed the issue in platitudes and generalities. The same pattern held whether the subject under discussion was persecuted religious believers, vulnerable groups, or those imprisoned for exercising the international right to free expression. At most, EU delegates were willing to cite countries for failing to cooperate with a commission rapporteur.

The European Union says it prefers "cooperation" to public pressure. French diplomats point to China, explaining that civilized dialogue coaxed China to ratify the International Covenant on Economic, Social and Cultural Rights. In making this argument, the French ignore China's recent labor camp detentions of Catholic bishops and thousands of Falun Gong practitioners, its destruction of a thousand churches just before Christmas, and its revival of the practice of confining dissidents in

*Nina Shea is director of the Center for Religious Freedom at Freedom House. The views expressed here are her own.*

psychiatric institutions. A German diplomat recently named special rapporteur for Sudan similarly cited the commission's success at gaining that country's cooperation in establishing—with international funding—a committee to eradicate slavery. But of the tens of thousands of people thought to be enslaved in Sudan, this committee has rescued only 353, in a single highly publicized event shortly after its establishment two years ago. Slaves, meanwhile, continue to be captured in government-sponsored raids. Clearly, cooperation is a fiction invented to protect Europe's honor and to shield the reputations of abusive governments.

\* Third, there is Europe's China problem. China is the country that stands to gain most from the U.S. ouster—so much so that some observers believe eagerness to curry favor with this important trading partner was the Europeans' main motivation for running three candi-

dates. Next year, with the United States out of the way, there will be no embarrassing resolution of censure that China will have to work hard to defeat. This session, the United States was the lone sponsor of the draft resolution against China, having failed to garner the European support it had through most of the 1990s.

China's open bullying and use of trade levers are well known at the commission. After Denmark introduced the resolution citing Chinese human rights abuses in 1997, China threatened to make the issue "a rock that smashes on the Danish government's head. Denmark, the bird that pokes out its head, will suffer the most." That was the last time the United States was able to secure co-sponsorship of the measure. Beijing tolerates no criticism of its human rights abuses on U.N. premises. After Freedom House arranged a press conference with Chinese democracy activists during last year's session,

China, with the support of Sudan and Cuba, brought proceedings against the group to bar it from participating at future sessions.

\* Fourth, resolutions dealing with economic rights for groups and even governments are proliferating. These "rights" as envisioned in the resolution are unachievable, depending as they would for their implementation on wholesale transfers of wealth and technology from developed to undeveloped nations. At the 2001 session, a dozen resolutions passed, some at European initiative, on the rights to food, water, housing, HIV/AIDS drugs, education, development, and a host of other economic issues.

A "right to development" resolution, introduced by the Non-Aligned Movement (alive and well a decade after the Cold War), names among other obstacles to development "the existing intellectual property rights regime [and other] impediments to transfer of technology." Incredibly, only Japan joined the United States in opposing this resolution. All of Western Europe voted for it except the United Kingdom, which abstained. In the past, the champion of economic rights was the Soviet bloc. Then as now, the main purpose served by debating such unenforceable rights is to distract attention from governments' refusal to enforce the civil and political rights of the individual.

To reverse these four deplorable trends is a tall order; an impossible one unless the Europeans come to their senses. Eleanor Roosevelt and the other drafters of the Universal Declaration of Human Rights at the first Commission on Human Rights in 1947 believed that moral suasion could be a potent force for change. Since then, Western Europe has made important contributions in advocating human rights abroad and been an essential American partner at the commission in giving a voice to the voiceless. If the European nations do not return to this tradition, the commission will have outlived its usefulness whether or not the United States recaptures a seat. ♦

Mr. SMITH. It is very incisive, and it goes to the heart of what is really going on by our European colleagues and allies as well as by the despotic governments that love a Caspar Milquetoast Human Rights Commission to look askance at their barbaric behavior.

Let me make a point—you have looked at this, I am sure, as well, Madam Chairwoman. The human rights voting history, you go through the different years and each of the resolutions that you have brought up, just like in Iran, if you look at the vote, it was 21 in favor of the resolution, 17 who voted no, 15 abstaining. Yes, we won on the Iranian resolution, but if you added up the abstentions and the noes, 32 to 21, the world body that reportedly is speaking as the conscience of humanity could not even muster a clear, compelling majority. And since we are a superpower, this ought to be a no-brainer, and yet it was 32 member-states of that Commission who voted either to abstain or to vote no. That shows how deeply flawed the Commission is.

Sometimes I think when you look at the makeup—and Mr. Lantos pointed out the makeup issue—the membership issue is the area crying out for reform. And I personally raised this with Kofi Annan when he was here speaking to Members on the Hill just a few days ago, that we can't have business as usual and expect there to be credibility.

Many of the rapporteurs do an outstanding job. I have had rapporteurs testify before my Committee in the past month and have been very much moved by their comprehensiveness and credibility, only to have the member-states step in as members of the Commission and turn what is real human rights reporting into a sham. And if this Commission continues as it is, I believe it will deteriorate. We haven't hit bottom yet.

It can get more—if I were a despotic country, I would make a beeline to be with the Human Rights Commission, to join arm-in-arm to join with the other dictatorships and cruel governments and regimes to make sure that we, A, do not get focused upon, that we do not get censured—even though it is only a paper censure to muddy the waters, which they do so well.

So the reform that cries out is the membership. There needs to be a minimum threshold of behavior to serve on this Commission. If you don't pay your dues and if you fall into sufficient arrearages, I am certain—for the General Assembly, I know it to be true—you can no longer serve.

It seems to me the money, while important, it is the barbaric behavior that ought to be a disqualifying issue. And this new manifestation—well, not so new, but it is getting more focus—of denying NGOs the capability to scrutinize and speak out openly, because you don't like what they said, that too has to be addressed and done so very aggressively.

Thank you for calling this hearing, Madam Chairwoman. We have two outstanding witnesses leading off the panel today who believe deeply in human rights. They did have some successes, despite the odds, and I do want to associate myself with Mr. Lantos, when he mentioned the word “superficial” as to why we lost our seat.



I believe Colin Powell is a man of his word. We had commitments. There is a change, a shift taking place. It is very dismaying where you will speak no evil, name no country. Do not be specific; don't mention the PRC by name. Do not talk about the endemic problem of torture, if you are arrested and you are a member of the Falun Gong or Christian or Buddhist faiths. You will be tortured.

I think the word "superficial" was very well taken. Our Administration—and I said this when the Clinton Administration ran the show—at least in Geneva we all spoke with one voice and we tried to do our level best to promote human rights. We may disagree about linkages of trade and things of that kind, but at least we spoke to the truth of power and to despotic power.

NGO reform and reform of the membership, there has to be a threshold of minimum behavior and I hope that we can engage that. That dialogue has to be had; otherwise, we are talking sham.

Thank you, Madam Chairwoman.

Ms. ROS-LEHTINEN. Thank you so much. I would like to introduce Mr. Menendez, who had the honor of representing the United States in the delegation a few years back to the Human Rights Commission in Geneva.

Mr. Menendez.

Mr. MENENDEZ. Thank you, Madam Chairlady. I want to commend you for holding the hearing, and I will be brief so we can get to the witness.

I am concerned that virtually every dictator and/or totalitarian regime will be represented on the Human Rights Commission this year doing in essence what they know how to do so well—repressing people, repressing the basic fundamental universal rights that the U.N. Declaration of Human Rights recognizes, not a U.S. perspective but an international perspective on freedom of association, freedom of speech and freedom of religion among many other basic rights.

So it is appalling as well—in my mind, a corruption of what the original intent of the U.N. Commission on Human Rights was meant to be. And while I certainly echo those who believe that part of our problem was our aggressive pursuit and promotion of the principles of human rights, I am seriously concerned about our allies, including those who would describe themselves as our closest allies, and the palpable anti-U.S. sentiment that they seemed to exhibit. And I am not quite sure whether it is a marching away from their historical commitment to human rights issues for the dollar or the franc or the Deutsche mark as their guiding light, or whether it is—and in part I know it has been the—it has been dispelled by many, but I am concerned about the sentiments that I speak to with parliamentarians in other parts of the world about the United States, unilaterally, I feel, both as it relates to some more recent examples in questions of missile defense, moving away from the Kyoto Protocol and others.

I think to be dismissive, that that doesn't have any element to some of this, I think is cause for concern because as I speak to those parliamentarians from Democratic countries of Europe, I consistently get a very, very negative sentiment, and it is one that does not inure to our benefit.

Unilateral leadership may be necessary when it is indispensable to act, but global leadership doesn't have to mean unilateral leadership. And I look forward to listening particularly to the Administration witnesses as to their sense of that, as well as to what were our active engagements in terms of pursuing this seat. Did we take this for granted or did we vigorously act to ensure our place at a table that, yes, we will be as active and as forthright and as thorough as we have been in the past, and even more so, so we will be sitting there.

But still I think it is incredibly important for the United States to be sitting there to exert the global leadership and to lead the way in trying to reform that very institution that obviously needs to have less of those people who violate the fundamental principles the Commission is to uphold, in terms of those rights, versus having a panoply of those at the forefront of, in essence, what the Commission's work should be; that the very violators, those who should be sanctioned by the Commission, are the ones who increasingly are put on the Commission.

So I look forward to the Administration's testimony, and I thank the gentlelady for the opportunity to speak.

Ms. ROS-LEHTINEN. Thank you so much, Mr. Menendez.

Mr. Payne.

Mr. PAYNE. Thank you. I will be very brief since I am not really a Member of the Committee, but find it a pleasure to be here under your leadership and just would like to acknowledge the privilege of having the former Permanent Representative to the U.N., the Honorable Jeane Kirkpatrick, here with us.

I appreciate the work you have done in the past and look forward to your testimony, and also to Ms. Nina Shea, who on the Sudan there is no one I could agree with more. I would like to thank you for your work.

I associate myself with the remarks of Mr. Menendez, who did talk about some of the resentment on Kyoto and missile defense and some of the other areas, I think. Another one that can be mentioned is the problem—I just returned yesterday from Europe, the problem of the death penalty, which Europeans just cannot understand. I have always been opposed to the death penalty and sort of view it as they do, and that is becoming a tremendous, tremendous issue with our allies. I think it is something that our Nation should review.

I am glad the Supreme Court did put a stay on a mentally retarded person with a 6-year mental capacity, put him on another stay from being executed in Texas.

But I think that all these issues come to play, and I hope that we look carefully at what happens this year with this human rights group and evaluate it carefully to just see if it is getting way out of line.

Thank you, Ms. Chairperson.

Ms. ROS-LEHTINEN. Thank you, Mr. Payne. You are always welcome to join our Subcommittee. Thank you so much for being here, and Mr. Lantos as well.

We are joined today by an exceptional panel of witnesses. We will first hear from Mr. William B. Woods, Principal Deputy Assistant Secretary of State for the Bureau of International Organization

Affairs, where he is responsible for all aspects of U.S. foreign policy at the United Nations and a number of other multilateral organizations. Mr. Woods has previously worked as the Chief U.N. negotiator in the Security Council. A career Foreign Service officer, his overseas assignments have taken him to Argentina, El Salvador and Italy. In Washington, he has served on the policy planning staff for Latin America as a special assistant in the Bureau of Political Military Affairs and on a number of functional regional desks.

He will be followed by Mr. Michael E. Parmly, Principal Deputy Assistant Secretary of State for Democracy, Human Rights and Labor, a post that he assumed in April 2000. Mr. Parmly, up until last week, served as the Acting Assistant Secretary of State for Democracy, Human Rights and Labor. A career member of the Senior Foreign Service, he has served as the Minister-Counselor for Political Affairs in the American Embassy in Paris, tough assignment, as well as Deputy Chief of Mission in charge of affairs at the American Embassy—now he has paid his dues—in Bosnia-Herzegovina.

He has also worked as the Political Counselor at the U.S. mission to the European Community in Brussels and the American Embassies in Luxemburg, Bucharest, Rabat and Madrid, and he was a wonderful host to us when we were in Geneva a few months ago, so we welcome you both and we will start with Mr. Wood.

Mr. MENENDEZ. Madam Chair, parliamentary question. Do we have copies of the Administration's testimony? Can we have it, please. Thank you.

Ms. ROS-LEHTINEN. Thank you.

Perhaps if you could address Mr. Menendez's questions. We are giving them out. We are sorry. We apologize. We put them in the record, and if you could please summarize them; and we apologize if they were not in your file, Mr. Menendez.

**STATEMENT OF WILLIAM B. WOOD, PRINCIPAL DEPUTY ASSISTANT SECRETARY, BUREAU OF INTERNATIONAL ORGANIZATION AFFAIRS**

Mr. WOOD. Thank you very much, Madam Chairwoman.

First, let me express our gratitude for this opportunity to discuss these very important, very complicated issues. Let me also express the thanks of the State Department and the Administration for the participation of members of this subcommittee on the Geneva delegation. It was a very contentious meeting of the Commission on Human Rights, and we did not—we weren't successful in everything, but we scored some notable successes, and that was in no small part due to the support we received from the Congress of the United States.

I apologize for including so much procedural detail in my testimony, but much of what we are talking about here are procedures. It may sound like the wiring diagram of a VCR, but I am afraid that's best I can do. I will address some of the institutional U.N. issues, and then I will turn to my colleague, Michael Parmly, who will address the larger question of our human rights policies particularly in multilateral organizations.

On May 3, the 54 members of the United Nations Economic and Social Council, at its annual meeting in New York, voted on the

candidates for the Commission on Human Rights in 2002. The U.S. was one of four candidates contesting three seats within the “Western European and Others Group,” which I will refer to as WEOG through the rest of this discussion. We lost by three votes. The final WEOG results were France, 52 votes; Austria, 41 votes; Sweden, 32 votes; and the United States, 29 votes.

The absence of the United States from the Commission on Human Rights weakens that organization and it reduces our ability to influence its deliberations. However, as Secretary Powell has stressed in his testimony elsewhere, this setback does not reduce our commitment to protect human rights worldwide. We have many tools available to pursue our objectives on a bilateral, regional and multilateral basis. Secretary Powell has also made clear he has focused on the issue, how best to, quote, “take our hit and move on,” close quote.

All member-states of the United Nations may be candidates for the Commission on Human Rights. The Commission on Human Rights elections are for 3-year terms and roughly one-third of the seats in each regional group are up for election each year. Candidates who fail to win a seat may run the following year.

There is no established requirement for Commission on Human Rights membership. If I may comment on something that Mr. Smith said, even in the General Assembly, there is no provision for excluding a member; you simply lose your voting rights if you don’t pay your dues.

The Commission on Human Rights seats are allocated to each regional group in rough proportion to the overall size of the organization. The Western European and Others Group, to which we belong, has 10 seats on the U.N. Commission on Human Rights. Candidates propose themselves for membership election to the CHR and may be endorsed by the regional group or may not. When they are endorsed by the regional group, election is a virtual certainty.

Among WEOG nations, there have been contested elections 5 years since 1990, so there often is a contested election among the WEOG group. We began our campaign for election in earnest in January; we made demarches in virtually all of the capitals of the Economic and Social Council members. We did not, for instance, demarche Havana; we thought it was a lost cause. The exceptions were states such as Cuba and Iran.

This initial effort was complemented by efforts in Geneva, New York and Washington. We also asked European Union members to agree to a single slate of candidates in order to avoid, once again, a contested election by our regional group in the Economic and Social Council.

Each of the other three WEOG candidates felt they had compelling reasons to continue to pursue their election campaigns. When it became clear that there would not a clean WEOG slate, our main lobbying effort began in New York. It was led by the senior members of our mission, Ambassador James Cunningham and Ambassador Betty King, who is our Special Representative to the Economic and Social Council.

Ambassador King personally met with almost every one of the Economic and Social Council delegation in New York, most of them more than once. If a member-state or delegation failed to respond

positively to our request for support, we raised the issue at a higher level. In most cases, demarches were made at the ambassadorial level and followed up in Washington, New York and Geneva.

Our original goal was 35 votes, a number we projected would assure us a victory. To offset a failure by some member-states to honor their commitments to us, we sought at least a 15 percent safety margin, or about 40 commitments. We, in fact, received 43 commitments which, in addition to our vote, represented, we hoped, 44 votes out of a 54-vote body, 35 commitments in writing.

We received 29 votes. Roughly one-third of the commitments to us were not fulfilled. We do not know which member-states violated their commitments. There is, by the way, a term of art they use for this in New York, but I can't enter it into the record.

Ms. MCKINNEY. I would love to hear it.

Mr. WOOD. I will let you know.

We believe there are several elements to explain our vote loss. First, our notable successes in the highly contentious Commission on Human Rights session just ended in Geneva, including our victories, particularly on Cuba and Iran, our continued pressure on China and others. In response, those nations and those sympathetic to them launched campaigns against us in New York.

Secondly, the three, the other three contenders within the Western European and Others Group were members of the European Union. Although not all members of the European Union used all of their votes for other European Union members, some, and perhaps many, did. Some may even have assumed that our reelection was a foregone conclusion, and therefore that they didn't need to vote for us. I would note, as we consider the European Union, that within the Commission on Human Rights, the set of states, the group of states that votes most consistently and most frequently with us are the Europeans. So although we have disagreements with them, although we feel that they do not take strong enough positions on a number of issues, in the global spectrum they are closer to us than almost any other identifiable group.

Our failure to pay the \$582 million so far in arrears and to pay current-year assessments at the new scale of assessments negotiated in December we believe created an environment which gave our adversaries more of an opportunity than they otherwise would have had.

Lastly, there is no question that the United States took principled positions in the Commission on Human Rights and in other U.N. bodies; these are controversial positions related to the International Criminal Court, related to the environment, related to economic, social and cultural rights. These are tough positions; the Government of the United States pays us to take tough positions. We intend to continue to take tough positions. But when you take tough positions, you get a reaction.

There is no question that we worked hard to ensure our election. We, in fact, hit and exceeded our target for preelection commitments. Even though we had exceeded that target, we continued to campaign until the last day before the vote, precisely because we knew that not all commitments are honored.

I was the one who had to inform our senior leadership we had not won. I don't hope to have to do that again.

The Commission on Human Rights and its place in our human rights policy—

Mr. PAYNE. We ask you what they said.

Mr. WOOD. I would have to get back to you, off the record.

The United States has been closely identified with the work and ideals of the Commission on Human Rights ever since Eleanor Roosevelt led the successful effort to draft the Universal Declaration on Human Rights. During most of its 55 years of existence, the Commission on Human Rights has advanced the essential U.S. view that the rights of the individual are the basis of society and should not be abridged, period, full stop.

Ideas have power, and the CHR has been an important forum for extending and applying that principle. But the CHR is far from perfect. As has been noted, there has been growing resistance to country-specific resolutions aimed at nations that carry out or condone human rights violations. There has also been a trend toward so-called thematic resolutions that in many cases attempt to promote an entitlement approach to development or other social issues.

Finally, as has been said before, others with human rights problems often seek election to the CHR in order to defend themselves against justified criticism or other reasons. We have openly argued that states should be elected to the Commission on Human Rights on the basis to their dedication to human rights, not as a matter of rotation or vote trading or other—

Ms. ROS-LEHTINEN. If we could ask you to quickly summarize your remarks, Mr. Wood.

Mr. WOOD. I would only say—we are now reviewing our approach to the Commission on Human Rights. We will continue to work for human rights in the General Assembly, in the Security Council and other U.N. forums. I would reiterate the view of the Administration that the amendment suspending payment of tranche three of our arrears payments creates additional resistance, dilutes our ability to take the tough, substantive positions we want to take, and is not the best way to approach this problem.

And, finally, I would like to thank you for hearing my testimony.

Ms. ROS-LEHTINEN. Thank you so much, Mr. Wood.

[The prepared statement of Mr. Wood follows:]

PREPARED STATEMENT OF WILLIAM B. WOOD, PRINCIPAL DEPUTY ASSISTANT  
SECRETARY, BUREAU OF INTERNATIONAL ORGANIZATION AFFAIRS

*The UN Commission on Human Rights(CHR): Reaction to the May 3 Election Results*

On May 3, the 54 members of the United Nations Economic and Social Council (ECOSOC) at its annual meeting in New York voted for the candidates for membership on the Commission on Human Rights (CHR) starting in 2002. The United States was one of four candidates contesting three seats within the “Western European and Others Group” (WEOG). We lost by three votes.

The absence of the United States from the CHR weakens that organization and reduces our ability to influence its deliberations. However, as Secretary Powell and as Under Secretary for Global Affairs Dobriansky have stressed in their testimony, this setback does not reduce our commitment to further and protect human rights worldwide. We have many tools available to pursue our human rights objectives on a bilateral and regional basis. We will remain active in other UN fora where human rights work is carried out, such as the UN General Assembly, the Security Council and the International Labor Organization.

Secretary Powell has made clear that he is focused on the future—how to best “take our hit and move on.”

*ECOSOC and The Human Rights Commission: Background*

*Economic and Social Council (ECOSOC):* The UN Charter (Articles 55–60 and 61–72) establishes ECOSOC as one of the three Charter Councils (along with the Security Council and the now quiet Trusteeship Council). The Charter calls for member states to promote progress in economic and social fields. ECOSOC was created with 18 members and enlarged several times, reaching its current size of 54 states in 1973.

Under the General Assembly, ECOSOC is the supervisory body for most of the UN Specialized Agencies (e.g. the World Health Organization, the International Labor Organization, and UNESCO); many UN programs and organs (i.e., the UN Development Program, the Office of the High Commissioner for Refugees and the Human Rights Commission); and a plethora of Regional Commissions, Standing Committees, Expert Bodies, and Functional Commissions.

ECOSOC meets one time per year in June–July, alternating between New York and Geneva. Elections for ECOSOC subsidiary bodies, however, are carried out at an ECOSOC organizational meeting in May. Elections for ECOSOC itself take place in the fall at the UNGA. All member states of the UN may be candidates for ECOSOC or its subsidiary bodies.

*The Human Rights Commission:* The CHR was created in 1946 by ECOSOC, also with 18 members. It has been enlarged several times, reaching its current membership of 53 in 1990, one fewer than ECOSOC. The post of the High Commissioner for Human Rights was initially a U.S. initiative at the 1993 Vienna World Conference on Human Rights; it was created later the same year by a UN General Assembly Resolution.

ECOSOC, and its subsidiary bodies such as the CHR, are elected by regional groups. The number of seats allocated to each regional group is in rough proportion to the overall size of the body in question. In all UN organizations, the U.S. caucuses with the Western European and Others Group (WEOG), which has 10 seats in the CHR. The rest of the non-European “others” in WEOG include Canada, New Zealand, and Australia.

In the CHR, the other regional groups have the following number of seats: Africa-15; Asia-12; Eastern Europe-5; and Latin America-11. Elections to the CHR are for three-year terms; roughly one third of the seats in each regional grouping are up for election each year. Candidates who fail to win a seat may run the following year.

Candidates propose themselves for membership elections to ECOSOC and to the CHR and may be endorsed by their regional group. When they are endorsed, election is a virtual certainty. In recent years in the CHR, there have been contested WEOG races in 1999, 1995, 1993, 1991, and 1990.

- If the number of candidates within a group is the same as the number of seats available, or if regional group informally agrees on a single slate of candidates, that slate is generally adopted by acclamation without even a formal voting process.
- If the number of candidates from a regional group exceeds the number of seats at stake, the matter is decided by secret ballot in ECOSOC. Candidates run only against competitors from their own regional group in the CHR. When seats for a CHR regional group are contested, all ECOSOC members vote.

There is no established requirement for CHR membership.

*The CHR Election*

Three seats were at stake in this year’s CHR election. The final results were: France-52 votes; Austria-41 votes; Sweden-32 votes; US-29 votes.

The U.S. began its campaign several months in advance by making written and oral demarches in virtually all of the capitals of ECOSOC members. The exceptions were states such as Iran and Cuba. This initial effort was complemented by efforts in Geneva, New York, and Washington.

We asked EU members to agree to a single slate of candidates in order to a contested election in ECOSOC, where the outcome would be beyond our control. EU Each of the other three WEOG candidates felt they had compelling reasons to pursue their election campaigns: France is a permanent member of the Security Council and has been off the CHR only once; Sweden had been campaigning hard since its narrow defeat last year and currently holds the EU Presidency; and controversy regarding Austria’s internal politics made international confirmation of its human rights record a high priority.

When it became clear that WEOG would not present an uncontested slate, our main lobbying effort occurred in New York. It was led by the senior members of our Mission: Ambassador James Cunningham (who has been our Acting UN Permanent Representative since January) and Ambassador Betty King, the U.S. Representative to ECOSOC. Ambassador King personally met with almost every one of the ECOSOC delegations in New York, most more than once.

If a member state failed to respond positively to our request for support, we raised the issue at a higher level. In most cases these demarches were made at the Ambassadorial level and followed-up in Washington, New York and Geneva. Our original goal was 35 votes, a number we projected—correctly—that would assure us of victory.

To offset expected failure by some member states to keep their commitments, we sought a 15 percent safety margin or 40 commitments. We received 43 expressions of support, including 35 in writing. The written commitments were in the form of a diplomatic note in capitals to our Embassies; by the foreign embassy in Washington to the State Department; or from delegations in New York to our Mission there.

In the event, almost one-third of the commitments were not fulfilled. We do not know which member states violated their commitments in this secret balloting. There are several elements to explain our vote loss. None of these, elements we believe, tells the whole story; all of them contributed:

- Following a very hard-fought meeting of the CHR, which ended one week before, during which the U.S. scored notable victories on resolutions relating to Cuba and Iran, a number of nations lobbied hard against our re-election to the Commission.
- The other three WEOG contenders were members of the European Union. Although there is good reason to believe that all EU members of ECOSOC did not use all three of their votes for the candidates who were members of the EU, some did. Some of those may have assumed that our election was a foregone conclusion, even without their vote.
- Our failure to pay Tranche II of our arrears after the UN agreed last December to reduce our scales of assessment set a context that may have helped out adversaries.
- Opposition to principled U.S. positions, including in the Commission on Human Rights, on the International Criminal Court, the environment, intellectual property, and an entitlement approach to development assistance were also an indirect factor.

There is no question that we worked hard to ensure election. We could have done more; you can always do more. But, we did not know that we needed to do more; we had hit our target for commitments. We continued to campaign until the last day to nail down every possible vote and made last-minute demarches in several capitals and in Washington if we had not gotten a commitment.

#### *The Place of the CHR in Our Human Rights Policy*

The United States has been closely identified with the work and the ideals of Commission on Human Rights since Eleanor Roosevelt led the effort to draft the Universal Declaration on Human Rights in 1947–48. During most of its 55 years of existence, the CHR has advanced the U.S. view that the fundamental rights of the individual are at the base of society and cannot be abridged. Ideas have power and the CHR has been an important forum for reaffirming and applying that principle.

We address human rights in other high-profile multilateral bodies, including the UN General Assembly and the Security Council. But the CHR remains the foremost multilateral forum dedicated solely to human rights.

But the CHR is far from perfect.

In the CHR there has been growing resistance to “country specific” resolutions (sometimes referred to as “name and shame” resolutions) aimed at nations that carry out, or condone, significant violations of human rights. There is increasing support for an approach where the cooperation of the country in question is sought in order to reach agreement on a consensus resolution text. We believe that strong resolutions are useful in cases of consistent violations of human rights.

There is also a trend toward greater reliance on “thematic” resolutions in the CHR that do not identify specific transgressions but rather address very broad issues or deal with economic, cultural and social “rights. In many cases, these resolutions attempt to promote an “entitlement” approach” to development that is not



fully shared by the U.S. Whether we return to the CHR or not, this clearly is going to be an area of growing activity in coming years.

Most importantly, others with human rights problems often seek election to the CHR in order to defend themselves against justified criticism. They get elected because other states often focus on rotation of seats, vote trading, regional solidarity and other peripheral concerns. The U.S. has strongly and openly argued that states should be elected on the basis of their dedication to human rights, not the working of some scheme.

*Next Steps For Dealing with the CHR*

The United States remains a voting member of the CHR until December 31, 2001. During this period, we will work with CHR member delegations to advance U.S. priorities and to prepare for next year's session. Even though we will not be a voting member at the next annual meeting of the CHR, as an observer state, we can co-sponsor resolutions; submit amendments, speak from the floor; provide papers; attend plenary, WEOG and working group meetings; manage resolutions; negotiate resolutions and chairman's statements; and lobby. We will not be able to introduce a resolution except with a CHR member as co-sponsor nor can we influence the outcome of a resolution by refusing to join consensus.

The Administration is undertaking a review of our approach to the CHR in light of our continuing commitment to human rights. I cannot give you an exact time when the review process will be completed, but expect an answer soon.

In addition to our work in the CHR for the remainder of the year, and our bilateral/regional agenda, the U.S. will focus its attention on the General Assembly and the human rights resolutions introduced there every year. We will work with High Commissioner Mary Robinson. We will raise human rights concerns whenever appropriate in relevant UN fora, including the Security Council. And above all, we will maintain our active, high-profile support for human rights in any setting where these issues arise.

Finally, I would like to reiterate the points made by Under Secretary for Global Affairs Dobriansky about the amendment passed by the House to link the payment of our "Tranche three" arrears of \$244 million to the return of the U.S. to the CHR. The Administration believes strongly that any attempt to link US payments to the UN—now or in the future—to U.S. membership in or support for the CHR is counterproductive. Not only will withholding money or adding additional conditions on arrears payments compound the problem of resentment towards the US in the UN and provide ammunition to our adversaries, but it will also frustrate our efforts to advance our human rights agenda in the UN system. The House is penalizing the UN—especially the technical and specialized agencies for which most of this money is intended—because of the actions of a few ECOSOC member states.

In conclusion, I would like to express my appreciation for the opportunity to appear before this committee today. We will continue to consult with your committee on these human rights issues and will look forward to your leadership. I thank you again for the honor of addressing you today and I would be happy to respond to any of your questions.

Ms. ROS-LEHTINEN. Mr. Parmly.

**STATEMENT OF MICHAEL E. PARMLY, PRINCIPAL DEPUTY ASSISTANT SECRETARY, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, U.S. DEPARTMENT OF STATE**

Mr. PARMLY. Thank you, Madam Chairwoman. I can be more brief than my colleague. But I don't want the Members of the Subcommittee to think that by being more brief it is because we give shorter shrift to the issue of human rights policy.

It seems to me, when we talk about the Human Rights Commission, we are talking about one of bodies in which we promote our human rights policies and values of the United States, beliefs of the United States. So I thought I would spend a couple of minutes briefly going over the policy of this Administration in this regard.

First, let me start by expressing my appreciation for the support given to my Bureau and my building and the interest, Madam Chairwoman and Members of the Committee, that you have shown in the issues that we work on every day. The fact that you and

your colleagues, Congressman Smith, Congressman Diaz-Balart, took the time to come to Geneva this year to visit the Commission made a clear statement about your commitment and America's commitment to the defense of universal human rights. Let me assure that you this is a commitment we in the State Department fully share, and I want to touch on that for a second.

The United States pursues an activist policy in defense of human rights, 24/7, around the clock, around the year and around the world. This commitment reflects our Nation's core values. This activist defense of human rights, in particular of civil and political rights, also serves our national interest.

The strongest, most stable, most tolerant and prosperous countries generally are those which respect human rights. Those countries make the best partners and the only real allies for our Nation. We have been recognized by everybody as the leader in this effort, setting the agenda for international human rights since World War II.

I want to address some of the very pertinent remarks of Congressman Lantos and some of the other Members of the Committee as to the utility of the Commission in this regard. At the Commission, as Mr. Wood has stated, the United States has shone a spotlight on human rights abuse through country-specific resolutions such as those on China and Cuba.

We have supported some of the working groups created by the CHR, such as the Working Group on Enforced or Involuntary Disappearances; and opposed others, such as the Working Group on the Right to Development. We have supported creation of some special mechanisms, such as the Special Rapporteur on Torture and their cruel, inhuman or degrading treatment or punishment; and we have opposed others, such as the Special Rapporteur on the Right to Housing. We have also found it useful to encourage visits by thematic or country-specific rapporteurs, countries with acute human rights problems.

We strongly supported the creation of the position of High Commissioner for Human Rights in 1993, and we support activities like those of the Office of the High Commissioner for Human Rights in their field offices.

But we would be remiss if we stopped there. Our annual country reports on human rights situations, which again Congressman Lantos referred to, which this year reached their 25th anniversary, have become the most respected publication on human rights and thus the most hated by human rights abusers around the world. These reports set the standard in this category.

U.S. Commission and commitment, which we have been advancing on a national basis, is now shared by many other states. International, intergovernmental and multilateral organizations in all regions of the world incorporate respect for human rights and fundamental freedoms as essential elements of their mission. Among these are the Organization for Security and Cooperation in Europe; the Organization of American States, the Summit for America's Progress; the Organization of African Unity, which adopted the African Charter of Human and People's Rights and last year adopted a resolution saying governments which come to power by military coups could not attend their annual summit meeting.

President Bush has reiterated our commitment to human rights, and, Madam Chairwoman, I am glad you have cited him in your statement. Your work continues under that leadership. It is, in fact, never-ending.

We are getting ready for a new set of human rights dialogue with key states around the world including both adversaries and allies. We also helped coordinated the vast range of bilateral programs which are developed and run through our embassies, AID missions and other mechanisms. Our own, the Bureau's Human Rights and Democracy Fund, uses ESF monies for small, targeted programs to address emerging situations such as this week's peaceful, successful elections in Peru.

To summarize, my key point is this: We have channels, avenues, levers with or without the Human Rights Commission. We will pursue our human rights policy regardless of whether we are on the Commission or not. Those laggards who rejoice in our removal will learn that we will be no less vigorous in our pursuit of this Nation's human rights principles than we ever were in the past. On the contrary, the Commission has been an important platform to enunciate our commitment to those principles and to make clear to the despots of the world that their behavior does not go unnoticed. That effort will continue in every forum and channel available to us.

The Department looks forward to working closely with this Subcommittee, the Full Committee and both Houses of Congress to carry forward our noble mission.

Madam Chairwoman, thank you very much.

[The prepared statement of Mr. Parmly follows:]

PREPARED STATEMENT OF MICHAEL E. PARMLY, PRINCIPAL DEPUTY ASSISTANT SECRETARY, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, U.S. DEPARTMENT OF STATE

Madame Chairwoman, it is a pleasure for me to appear here today. My colleague from the Bureau of International Organizations has already talked about how the Commission on Human Rights (CHR) works, so I will focus my remarks on U.S. human rights policy and the role we play at the Commission.

Before I begin, however, I would like to express my appreciation for the support you have given to my bureau and the interest you have shown in the issues we work on every day. The fact that you and Congressmen Smith and Diaz-Balart took the time to come to Geneva this year and visit the Commission made a clear statement about your commitment to the defense of universal human rights. Let me assure you that this is a commitment we in the State Department fully share.

The United States pursues an activist policy in defense of human rights, with a 24/7, round-the-clock, round-the-year, round-the-world mandate. This commitment dates back to the Declaration of Independence and reflects our nation's core values and our belief in the sanctity of the individual.

This activist defense of human rights, in particular of civil and political rights, also serves our national interest, for the strongest, most stable, tolerant and prosperous countries are those which respect human rights. Such countries make the best partners and the only real allies for our nation.

The United States has been recognized by everybody as the leader in this effort, setting the agenda and implementing a vision of international human rights since the end of World War II. We played the key role in the creation of the United Nations and in the drafting of the Universal Declaration of Human Rights. We were the champions of freedom and democracy throughout the Cold War, and our insistence on inclusion of human rights issues in the Helsinki Final Act was an important statement of our principles in that era.

At the CHR, the U.S. has shone a spotlight on human rights abusers through country-specific resolutions such as those on China and Cuba. We have supported some of the working groups created by the CHR, such as the working group on en-

forced or involuntary disappearances, and opposed others, such as the working group on the “right to development.” We have supported creation of some special mechanisms, such as the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and opposed others, such as the Special Rapporteur on the “right to housing.” We have also found it useful to encourage visits by thematic or country-specific rapporteurs to countries with acute human rights problems.

The U.S. strongly supported the creation of the position of High Commissioner for Human Rights in 1993 and supports activities like the Office of the High Commissioner for Human Rights’ field offices. For example, the U.S. helps finance the OHCHR Field Office in Bogota, which is assisting the Government of Colombia in its efforts to reform its human rights practices.

Our annual Country Reports on Human Rights situations, which this year reached their twenty-fifth anniversary, have become the most respected publication on the subject of human rights, and thus the most hated by human rights abusers. These reports set the standards in this category.

The U.S. vision and commitment, which we have been advancing on a national basis, is now shared by many other states. It is shared domestically, bilaterally and through multilateral organizations. National constitutions and basic legislation drawn up around the world in the last 50 years now incorporate respect for human rights and fundamental freedoms as essential elements, and other governments have joined us as vocal advocates for human rights.

International, intergovernmental and multilateral organizations in all regions of the world incorporate respect for human rights and fundamental freedoms as essential elements of their mission. Among these are the *Organization for Security and Cooperation in Europe* (which emerged from the Helsinki process and includes promotion of the “human dimension” as one of its three principal purposes), the *Organization of American States* (which will shortly adopt an “Inter-American Democratic Charter” dedicated to preservation of representative democracy among the states of our region) and the *Summit of the Americas* process.

Elsewhere in the world, other regional bodies are moving towards the same goals, albeit at different speeds. The *Organization of African Unity* has adopted the African Charter of Human and Peoples’ Rights, and last year adopted a resolution saying governments which came to power by military coup could not attend their annual summit meeting. The *Association of South East Asian Nations* (ASEAN) now includes human rights dialogues in their ASEAN Regional Forum.

President Bush has reiterated our commitment to human rights as a key part of our foreign policy, but he recognizes these things take time:

“History tells us that forcing change upon oppressive regimes requires patience. But history also proves, from Poland to South Africa, that patience and courage and resolve can eventually cause oppressive regimes to fear, and then to fall.”

Madame Chairwoman, our work continues—it is, in fact, never-ending. My Bureau in the Department of State is now preparing our third annual report on International Religious Freedom, and our first annual report on Trafficking in Persons. We are also getting ready for a new set of human rights dialogues with key states around the world, including Vietnam, Russia, and the European Union. (Renewed dialogue with China remains a possibility, but it’s up to Beijing.)

We also help coordinate a vast range of bilateral programs which are developed and run through our Embassies, AID missions and other mechanisms. The International Military Education and Training program (IMET) includes teaching the militaries of the world to respect civilian authority. USAID programs include democracy promotion in scores of countries. Public Diplomacy programs set forth for foreign audiences the U.S. vision of the key roles played by human rights and democracy. Our own Human Rights and Democracy Fund uses ESF monies for small, targeted programs to address emerging situations, such as this past week’s peaceful, successful elections in Peru.

My point is this: we have channels, avenues, levers—with or without the CHR. We will pursue our human rights policy regardless of whether we are on the Commission or not. Those laggards who rejoice in our removal will learn that we will be no less vigorous in our pursuit of this nation’s human rights principles than we were in the past. On the contrary. The U.N. Commission has been an important platform to enunciate our commitment to those principles, make clear to the despots of the world that their behavior does not go unnoticed. That effort will continue, in every forum and channel available to us.

The Department looks forward to working closely with this Subcommittee, the Full Committee, and both Houses of Congress, to carry forward our noble mission.

Thank you.

Ms. ROS-LEHTINEN. Thank you so much.

We will begun our questions with Mr. Menendez, because he was not in my line of vision, and I went to Mr. Lantos for his opening statements before Mr. Menendez. So I apologize.

Mr. MENENDEZ. Thank you, Madam Chairlady.

Thank you for your testimony, gentlemen.

Mr. Wood, let me ask you a couple of things. Number one, is this an institution where we have got to learn how to count, because we could end up short in terms of passage of legislation? And those of us who run for leadership positions on the short side of that know this. So I know about counting and secret ballots.

But having said that, if that is the case, as you have described it, how do we seek to find ourselves in a better position in the future so you do not have to make that phone call again? How do you either change the system or how do you pursue a recipe by which you will more likely achieve success than you did this time?

Mr. WOOD. First, I think it is important to recognize that what happened this year is an aberration in a trend line since 1947, and I think that we have to be careful not to attempt to change a system that has not—at least as far as our election to the Commission on Human Rights—has not served us badly.

Second, it is not clear to me—I don't believe, indeed, that it is necessarily to our advantage to attempt to open up U.N. elections to public vote count, not least because the United States is the United States, and each time we are forced to publicly choose between states, what we do immediately produces headlines in every capital affected. What others do doesn't. It would subject us to more pressures, which might complicate the human rights decisions we would be making.

In addition, if we were to pursue this as a benchmark, then we would, in essence, being giving a veto over our activities in the U.N. to those who oppose such a step.

As that is a lot of bad news, let me try to also turn to some good news. The first good news is, we are consulting now with our European colleagues and others in the Western European and Others Group, and it is important to remember that there are others in the Western European and Others Group who also need to be taken care of. Canada, for instance, this year voted most closely with us of any delegation in Geneva and should certainly be entitled to its time on the Commission.

If we can reach agreement with our WEOG colleagues to put forward uncontested slates in the future in a forum that is acceptable to the United States, that would finesse the question of a secret ballot, because under U.N. procedures, when there is an uncontested regional group, the vote is by acclamation.

Mr. MENENDEZ. And if you cannot, because in your written testimony you were describing the impulse of a series of countries because they felt they needed to be there. And if you cannot, then what?

Mr. WOOD. I don't have a formula that would guarantee U.S. election every year to the Commission on Human Rights that would also be achievable in a foreseeable time frame in the United

Nations and that would not create as much backlash against our positions as it would help them.

We are actively reviewing this whole complex of issues in the Administration now, but——

Mr. MENENDEZ. Is that what you referred to in your written statement when you said, “The Administration is undertaking a review of our approach”?

Mr. WOOD. Yes, among other things, yes.

Mr. MENENDEZ. Why don’t you edify for me, what does that mean, “a review of our approach to the Commission on Human Rights”?

Mr. WOOD. I think we have heard from the Subcommittee Members many of the issues that we were discussing. We are dissatisfied that the Commission on Human Rights does not take a stronger stance in many cases. The problem is that it is not doing enough of a good thing that we all acknowledge is a good thing.

So the question is, how do we strengthen the Commission on Human Rights, not weaken it; and how does our approach to the Commission on Human Rights after this election strengthen the Commission on Human Rights and not weaken it?

The second element relates to both the membership of the Commission and to these thematic and other noncountry-specific resolutions. We are actively examining the question of how we should approach the elections to the Commission on Human Rights in the year 2002. We have a number of capabilities as an observer, which I detailed in my written testimony.

Mr. MENENDEZ. In the interest of limited time, I read your whole statement. Something that rarely happens here.

Mr. WOOD. Thank you.

Mr. MENENDEZ. Let me just say, you say in your statement, we could have done more.

Mr. WOOD. Yes.

Mr. MENENDEZ. Maybe you could just give us a sense of what you mean by that.

You go on to say, “But we did not think we had to.” But having said, we could do more—and let’s for argument’s sake suggest that you can’t get an agreement with your WEOG allies to come to a finite slate that you could agree upon. Would you advocate as one of the things within the Department and its Administration that this effort should go to a higher level in terms of accomplishing and assuring that the United States is on the Commission?

Mr. WOOD. Well, first, our efforts were at a very high level in a number of cases. But I included that sentence knowing that it would be controversial precisely because I wanted to be completely frank with the Subcommittee. We can always do more. We can always start earlier. We can always make more phone calls. We can always make more demarches. We can always work harder.

And if we reach the conclusion, that is the way to go, that is what we will do. We will, if we reach a conclusion as to——

Mr. MENENDEZ. But, for example, would it have been appropriate, had you thought you had been in trouble, to get the Secretary of State engaged or, for that matter, even the President? Are human rights important?

In the last Administration, we heard from that Administration that there were three pillars of U.S. foreign diplomacy. One of those pillars was human rights and the promotion of democracy. Is that still a pillar of this Administration, and if so, to what extent are you willing to pursue it?

Mr. PARMLY. Mr. Menendez, if I could speak to that point, it certainly is. The President and the Secretary have spoken repeatedly and eloquently. The intensity of their efforts throughout the Human Rights Commission, when it was going on in Geneva, speak precisely to that commitment and to that belief.

I wanted that sense to come through in my statement. The commitment is there.

Mr. MENENDEZ. It is still a pillar? You are telling the Committee it is still a pillar, for this Administration, of its foreign diplomacy?

Mr. PARMLY. It certainly is.

Mr. MENENDEZ. My question goes back to you, Mr. Wood. If it is a pillar, would you as you approach next year's membership, urge your superiors going up to the Secretary and beyond to be advocates, if you think it is necessary to achieve membership the next time around?

Mr. WOOD. Absolutely, and that was our approach this time too, to involve them as we thought necessary.

Mr. MENENDEZ. And lastly, you did not mention in any of your concerns as to whether or not the unilateralism that has been described by some, including myself, is a contributing cause. I know there are some who have dismissed that out of hand. It is either the money they didn't pay or walking away from human rights principles. But since I see your title is, in essence, "international organizations," is it my sense alone or is there not a growing sense, that I hope the Administration finds palpable out there, about working with our allies abroad before we make unilateral statements and decisions without the appropriate level of consultations, so that we do not get the type of reaction we seem to be getting. Or is that only at a parliamentary level it doesn't reflect those governments?

Mr. WOOD. Mr. Menendez, all member-states of the United Nations and all nation states develop their own positions unilaterally. As I said earlier, we intend to continue taking unpopular positions if we think they are right. At the same time, we also believe in working productively and constructively with other national governments, member-states in the U.N. to find an acceptable compromise if there is one.

I am not trying to be cute. I am trying to display a genuine tension between the responsibility that we have to take the positions that the United States believes are the ones we must take, and the practical effect of reaching compromises with other states so that issues can move forward in a cooperative manner. We are dedicated to both of those.

Mr. MENENDEZ. Let me just close by saying, it is not the tough decisions, particularly on human rights, that I find any quarrel with. I would be there. But I think we need to understand as we talk about global context and trades and economies and other things that while we are the indispensable leader, that does not

mean we are indispensable in certain contexts of achieving having others join us.

I would hate to have to go it alone each and every time, more and more. Sometimes that is necessary for leadership, and sometimes it is necessary to act unilaterally. But I just hope that that is not our strict mind-set in what is clearly a much more global society today than it was before.

I thank the gentlelady.

Ms. ROS-LEHTINEN. Thank you so much, Mr. Menendez. We are so proud to be joined by our former Chairman of the Full Committee and now the Chairman of the Middle East Subcommittee, Mr. Gilman, and I will recognize him for his opening statement and any questions that he might have as well.

Mr. GILMAN. Thank you, Madam Chairman. I want to thank you for conducting this hearing on an issue that we are all vitally concerned about.

We are outraged by the failure of the U.N. to reelect the U.S. to membership to the Human Rights Commission. We have been a member, as I understand it, since 1946. As the Commission's founding chairman Eleanor Roosevelt oversaw the drafting of the Universal Declaration of Human Rights at that time.

Apparently, our Nation is now being penalized for its courage in speaking out for the victims of human rights abuses around the world. The U.N. Commission has increasingly become a refuge for the despots and scoundrels, indicative of our Nation's inattention to that problem for the past 8 years. We have allowed powerful governments, such as China, to dominate the Commission. The Commission has turned into a closely knit group of human rights abusers. The Chinese government arrests, jails, tortures, executes people for peacefully practicing their religions. Cuba, Libya, Syria, outstanding Commission members, have incarcerated thousands of political prisoners. Denying our government Commission membership, while allowing those despotic governments to become members, underscores the fact that we have not effectively challenged those dictatorships over the past few years.

We can no longer afford to merely introduce resolutions, permitting countries like China to buy off Third World nations and their votes, as we forgive and forget and move on to the next issue.

Recently, China raised an objection over the participation of three human rights NGOs that were seeking participation in the NGO forum surrounding the U.N. Conference on Racism to be held this summer in South Africa. Our Nation called for a vote, and the result was that two out of three groups were accredited to attend the racism conference. One of those was the International Campaign for Tibet, which is represented here today. We want to commend the State Department, especially Cheryl Simms from the Bureau of Democracy, Human Rights and Labor for the hard work that went into ensuring that China was defeated in its inappropriate initiative to prevent NGO participation.

And we are very much concerned—you know, I hear a great deal from analysts and commentators that we just did not do the work that was needed to make certain that we weren't going to be ousted from the Human Rights Commission. I would welcome if our witnesses would comment on that.



Mr. WOOD. Thank you, Mr. Gilman.

In my written testimony, we have gone into greater detail in the steps we did take to get elected. There is certainly a tendency by others, other member-states of the U.N., to point the finger at us for their failure to elect the right countries to the Commission on Human Rights. But I think that the most pertinent statistic is the one that I gave earlier, and that is there are 54 states represented on the Economic and Social Council; including our own vote, we had 44 commitments, 35 of those in writing, and we got 29 votes.

When you have 44 commitments out of a 54-vote body, you feel as though you have done your job. We obviously were wrong. It won't happen again.

Mr. GILMAN. Let me ask you, there is some discussion in the Congress whether or not we should consider the voting pattern of Commission members and the support they give us on our initiatives when evaluating whether or not to expand our commercial, political and military relations with those countries.

What comment would our panelists have on that proposal?

Mr. WOOD. I think it is an extremely complicated idea. For one thing, we have talked about the role of the European states in putting forward a contested Western European and Others Group, which led to a situation in which we can lose the vote. Of course, the Western European and Others Group also represents the states whose votes most clearly mirror ours on the Commission on Human Rights.

Regarding other states, in fact, I think that we certainly do take other states' human rights record into account in every aspect of our formulation of foreign policy, as one of the central elements of our foreign policy, and we include that in our thinking. And I think, rather than focusing on votes in the Commission on Human Rights, the voting record in the Commission on Human Rights, which can arise from a variety of motivations and concerns, we should focus on the human rights record of states in the concrete as we formulate our thinking.

Mr. PARMLY. Mr. Gilman, if I could add to Mr. Wood's comments, first of all, thank you for your questions and thank you for your leadership through the years on these issues.

You refer to the number of really horrible countries that are on the Commission. I think that only underlines the importance of U.S. leadership, and it only makes all the more remarkable the fact that we were able to win as many resolutions as we were in Geneva this year. We are probably paying a price for that now. This won't happen again if the President decides that we are going to get back on.

But I did want to assure you that we did look—and that is one of the purposes of my bureau, the Bureau of Democracy, Human Rights and Labor, to make sure when a policy is formulated regarding a region, and especially regarding a specific country, that the human rights record takes that into consideration. It is one of the reasons for the annual report, the country reports on human rights they publish every year at the end of February. It is to ensure that the record is there and then we consider that. Just like the Congress considers that when they look at funding levels for assistance to countries, we ourselves look at that.

There are a variety of pieces of legislation that ensure that the human rights of a country, be it the African Growth and Opportunity Act, be it the Leahy amendment, be it all these pieces of legislation that do require the Administration to look at the human rights record. And we do; that is our job. If we do not, then DRL is not doing its job.

Mr. GILMAN. Looking at the human rights record, what is the implementation of that analysis? Do we then utilize that for some purpose? Do we impose some penalty on those who are not abiding by human rights?

Mr. PARMLY. I would like to think we do. I would like this think our assistance programs very much take into consideration what the human rights record of a country is.

Mr. GILMAN. How do we penalize them?

Let's assume that nation A has a bad human rights record, what do we do with regard to implementing our concern?

Mr. PARMLY. I am not sure it is a mechanical formula. I am sure that the President—just like all Administrations have made clear, it is easy for us to bring strong partnerships and alliances with countries that share our values and practices; and countries that don't share our values and practices, we are not going to have as close an alliance with.

A relationship with a specific country is inevitably a combination of a whole series of factors, and in some cases, the strategic importance of a country is such that we will be inclined to work with that country.

But I do want to assure you, Mr. Gilman, that we take very much into consideration what is the human rights record of that country.

Mr. GILMAN. Madam Chairman, I know you have been generous with your time. Just one last inquiry.

With regard to the composition of the Commission, should we ask the U.N. to examine the criteria for membership which would render ineligible countries whose governments who have persistent human rights violators?

Mr. WOOD. Mr. Gilman, there is no body in the U.N. in which there are provisions for excluding any member of the U.N. from some form of membership. The underlying value of the U.N. is sovereign equality; everyone gets an equal shot at each job or seat.

That said, the United States has made it crystal clear over and over again that we strongly believe that votes should be based on substance, that it should not be rotation, it should not be vote trading, it should not be other schemes when the Economic and Social Council is electing member-states to the Commission on Human Rights. What they should be looking at is the record of those states on human rights and the positions they take regarding human rights in other states.

I don't believe that there is a procedural fix that will both advance our ability to press for better human rights performance and a stronger Commission on Human Rights. I do believe, however, that we will continue and, indeed, increase our efforts to focus attention on the very sorry membership of some states on the Commission on Human Rights.

Thank you.

Mr. GILMAN. What I am suggesting is, I think we ought to look at the possibility of establishing some criteria before we vote on membership and have that criteria agreed upon by the U.N. membership.

Thank you, Madam Chairman.

Ms. ROS-LEHTINEN. Thank you, Mr. Gilman.

Ms. McKinney.

Ms. MCKINNEY. I thought you were going to go. You are being extremely generous.

Mr. Wood and Mr. Parmly, I read both of your written testimonies. I would like to commend you for saying a lot in a few words. Very good. And, Mr. Wood, your testimony, in particular, helped us to understand the nuances of just exactly the mechanics of the vote itself, which was important for having a background.

The Bureau of International Organization Affairs, and of course, Human Rights, we support both of your bureaus because, especially clear on this Committee, we support U.S. involvement in the world, and we want the United Nations to be the leader that it should be.

Mr. Wood, you talked about having gone from 44 to 35 to 29. Those of us involved in politics call that "the lie factor," and anybody who has ever run for office, we are very—fully familiar with the lie factor. So you have just learned it yourself.

I would also note for the record that the United States was also kicked off the International Narcotics Control Board, and maybe you could sort of talk a little bit about that as well, what that means to us.

While you are looking that up, I will just note that the former Assistant Secretary for Democracy, Human Rights and Labor said that the world was teaching us a lesson; and if I just look down this little list, we have got the death penalty, the Convention on the Rights of the Child, Convention on the Rights of Women, withdrawal from Kyoto, renunciation of ABM, our failure to lead on the land mine ban, nonpayment of a billion dollars in arrears, our position on the international criminal court.

It seems that in a lot of areas we may have been out of step with our allies, and I think Congressman Menendez's point is an important one, that the isolation comes as a result of two points, one with our allies and the other one on these important issues that some people would like to shrug off as not being important.

Now, what exactly is it that we can do with our allies? That is my question.

Mr. WOOD. Let me first respond to questions about the International Narcotics Control Board.

The INCB's 13 members are elected by the Economic and Social Council and serve in their personal capacity—it is not a nation that is elected, but it is an individual person who is elected.

Herb Okun had been our representative for a good three terms, his third 5-year term. In this election, three out of the five incumbents running were defeated. We don't see this as related to the Commission on Human Rights vote. Herb ran a good campaign. We helped him in precisely the normal way.

Frankly, this is the kind of ebb and flow in those kinds of positions that occurs from time to time. So I don't believe that it would

be correct to see an Economic and Social Council mandate or lack of mandate in combining these two electors.

Ms. MCKINNEY. It wouldn't have anything to do, say, for instance, with our approach to drugs and Plan Colombia or anything like that?

Mr. WOOD. I am sure that they all had their own reasons for casting the votes they did. As I say, the name on the ballot is Herb Okun, it is not the United States; and I am sure that some of them voted against Herb because of the positions that he was taking in the International Narcotics Control Board. I am sure others were voting him out for other reasons.

I certainly don't think that we can read into this a repudiation of our strong positions on narcotics or narcotics control.

Mr. PARMLY. If I may, you referred to a previous Assistant Secretary for Democracy, Human Rights and Labor, I think that raises an important issue. The United States is a leader; it is recognized as a leader. As I said in my statement, I think we are recognized by everybody for good or for bad, depending on where you come down on the human rights agenda as leader. That means that often we are going to be unpopular.

I don't think I have seen a pulling back in that leadership effort. I think it is important for the United States to continue to be the leader.

I think the United States—speaking out on unpopular issues such as human rights in China, we don't gain a lot of friends by doing that; but it is important that we speak out. That is what America is, and I think the American people—you are the representatives of the American people, so I do defer to your judgment. But anything I have ever seen, I don't think they would want us to see us pulling back.

As the Secretary has said, you know, we may be paying a price for that. I don't see any desire for us to pull back, but would welcome the views you have on that.

Ms. MCKINNEY. Of course, I don't want us to pull back either. I would like for us to consider human rights more in the formulation of our foreign policy and, as my opening statement would indicate, as far as a part of our domestic policy as well.

Secretary Powell has said that we left a little blood on the floor with our Israel-Palestine vote and the Honduras Ambassador to the U.N. pointed out that Ambassador Negroponte knew all about the human rights violations and he did nothing to stop them. This was when he was Ambassador to Honduras.

Could it be that our past is catching up with us?

Mr. WOOD. Madam Congressman, I have to say that I am pretty proud of our past, and I think that, for instance, our veto in the Security Council of an extremely unhelpful resolution on the Middle East. While it was regrettable that we could not come to agreement with the other members of the Security Council, while it was regrettable that they advanced a vote—indeed, rushed a vote for external reasons—they wanted a vote to take place, it is my understanding, during the time of a major meeting of regional leaders.

I think that vote was the right vote.

And regarding Ambassador Negroponte, I cannot—I was not in Honduras. I was working on Central American affairs at that time

and had served previously in our embassy in San Salvador during a controversial time; and I can tell you that in San Salvador, and I am absolutely convinced in Honduras, we spent a good, solid 40 percent of our time working on human rights issues, both because it was the right thing to do and because we knew that U.S. support for the governments there was contingent on human rights improvement.

So I don't want to preempt any discussions about Ambassador Negroponte in another body, but I can only say that I can't confirm the information that you have.

Ms. MCKINNEY. Mr. Wood, I have a question specifically for you, I guess, a series of questions, and this is about you in the Conference on Racism. What is the Bush Administration position on participating in the U.N. Conference on Racism?

Mr. WOOD. First, we consider racism an abomination, and that is an important sentence to say, so there is no ambiguity. We also know, however, that the World Conference Against Racism, both in this iteration and in previous iterations, has suffered from multiple agendas in the preparation of those conferences; and until we have a better understanding of what the concluding document is going to look like, we are reserving our position on attendance.

Ms. MCKINNEY. So basically that means, as of now, you have not made a commitment to participate?

Mr. WOOD. I think that is correct. I think another way of saying it is that we have made a commitment to attempt to work with other nations to produce a conference that will be forward-looking, will attempt to address the abomination of racism and will also be one in which other agendas do not dilute that issue.

Ms. MCKINNEY. Talking about slavery today is good, but talking of slavery of the past is bad?

Mr. WOOD. I think I can't get into that kind of detail, except to say—

Ms. MCKINNEY. You said forward-looking.

Mr. WOOD. Again, I think that is the nature of our orientation toward the WCR, but I don't believe that that excludes talking about the historical tragedy and mortal sin of slavery.

Ms. MCKINNEY. How much money has been committed to support the Conference?

Mr. WOOD. I am honestly not sure about that answer. I would be glad to take it and get back to you.

Ms. MCKINNEY. Thank you.

I have another question about the U.S. position on the Madam Ba-N'daw report on the exploitation of resources in eastern Congo, and the U.S. position with respect to that at the U.N. Security Council. There are efforts afoot to remove Madam Ba-N'daw as the chairman of that committee that looked into the exploitation of Congolese resources.

What is the U.S. position with respect to the discussion of that document, the further research of that document, and who would do the research and who would lead that committee?

Mr. WOOD. First, we think the report has been very helpful in stimulating a serious conversation about the subject in the Security Council. The report makes a number of assertions, many of which we strongly agree with. I don't think we are in a position to con-

firm all of them, but it has improved the discussion in the Security Council dramatically.

A Security Council mission just went to the Democratic Republic of Congo and the neighboring states and the allegations contained in that report formed part of that dialogue with many of their interlocutors. I think that the next step, from my point of view, is further Security Council consideration of the results of that report and incorporation of those deliberations in the next resolution or other Security Council action on the Democratic Republic of the Congo.

At the same time, I know that there is talk in New York about a follow-up report or further work by the panel, and we are willing to see that.

Ms. MCKINNEY. Under the leadership of Madam Ba-N'daw.

Mr. WOOD. I think we are certainly not attempting to undermine her position in any way. I think that she is suffering from the penalty of taking a strong position. I think she is being challenged to verify some of her allegations, and that is slightly complicated.

But we, as I say, continue to believe that the report was an extremely helpful catalyst and very informative.

Ms. MCKINNEY. For your information, the Congressional Black Caucus has sent a letter to the U.N. Conference on Racism. I hope you have seen that. I have sent a letter, as well, urging the Bush Administration to not only participate, but to support with hard dollars and to include the Members of the Congressional Black Caucus as a part of the delegation.

Mr. WOOD. Okay.

Ms. MCKINNEY. Something more than okay.

Mr. WOOD. I will certainly look into the letter and make sure that you get a response. And I will take your question on the contribution of resources and get back to you.

Ms. MCKINNEY. Thank you.

Thank you, Madam Chair.

Ms. ROS-LEHTINEN. Thank you, Ms. McKinney.

Mr. Smith.

Mr. SMITH. Madam Chair, thank you very much.

Let me ask you a couple of questions and ask you your response. You know, countries that comprise regional blocs can envelop, evolve, change; and it seems to me that we, the WEOG, may be today a less viable construct because the European Union itself has been radically altered and changed, as we all know.

My understanding is that even today or tomorrow, this week, Ireland will be voting on the Nice Treaty. And I read the Nice Treaty; it is a power apportionment for the European Union. They are becoming one unified state, a superstate, if you will. And it seems to me that what we are seeing should perhaps have been anticipated.

Yes, we had the commitments of 43 countries, and I would hope, Mr. Wood, if you could tell us, did we go back to each of those 43 and ask them, you know, accountability in all things is always a useful and important aspect? And I would ask you to respond to that in a moment.

But I noted in her testimony Ambassador Kirkpatrick not only makes the point that the world's most repressive dictatorships have made real progress in their efforts to destroy the United Nations

Commission on Human Rights, but she points out that virtually all the dictatorships in the world will be participating in the Human Rights Commission next year.

She also points out and reminds us that in 1994 we lost our seat on the U.N. Commission on the Status of Women, and that was during the Clinton Administration. And I don't think people could trot out the pretext of arrearages or the Kyoto Treaty or anything else. I mean, certainly, since then, President Clinton could have submitted the Kyoto Treaty for ratification. I think he took note of the 95-0 vote that took place in the Senate about inclusion of the developing countries and said, perhaps it needs some fine tuning.

And I support the Kyoto Treaty, but I do think it needs fine tuning. I don't think it is a perfect document.

I also will point out that people say the International Criminal Court. I led the delegation last year to the OSCE parliamentary assembly, as chairman, and got into a very vigorous battle with our European colleagues over there, in both a floor fight and a number of bilaterals, especially with France and Germany and others about the International Criminal Court, and was amazed as to their short-sightedness about what that will do to peacekeeping.

If you want to see where the International Criminal Court will be, the harbinger of that happened on the U.N. Commission on Human Rights, where countries like Sudan and others will sit with the robes of respectability and will say to peacekeepers—will read that American peacekeepers, you have committed atrocities. Now if somebody commits atrocities like at My Lai, let us hold them to account, as we ought to.

But it seems to me empowering the Libyans and others to hold our peacekeepers to account is a recipe for absolute disaster and will probably mean we don't participate. And the fact that they don't see that is terribly short-sighted, it seems to me.

But as was pointed out and as we all know, we lost our vote on the Narcotics Board; we lost that seat on the U.N. Commission on the Status of Women in 1994. Increasingly we see the WEOG working as a group where it is the EU and not the U.S. as a part of it. Maybe we ought to rethink—and you might want to comment on this—on those regional blocs.

You know, it seems to me that there is one group out there, one country that can't serve on the U.N. Human Rights Commission. Israel. Where is their bloc? The whole bloc system needs to be reevaluated.

I would disagree, Secretary Wood, when you say you don't think there is a procedural fix. I know you were speaking specifically to the criteria, but I think, you know, if something stinks, it needs to be fixed. And when you have—I mean, as I said in my opening, the Nazis could serve and be in good standing on the U.N. Human Rights Commission today. That is appalling to me.

And we have countries, by way of their atrocities against their own people, who commit heinous crimes and yet they are sitting in good stead on that Commission. So the regional bloc system, does that need to be reevaluated?

The criteria issue as it relates to both the NGOs—I mean, I am amazed that we are not crying from the rooftops that the Family Research Council, the Wesenthal Center, Freedom House are all of

a sudden, because they have the audacity to speak truth to dictatorship, they are at risk and may even lose their credentials to speak out.

What kind of system is this? It is beyond flaw. I am not saying that we need to just throw it away. We need to fix it. We need to look to the procedural fix and say, year 2001 begins the year of reform.

The only thing good to come out of this loss of vote is the scrutiny that it now brings to these processes that have been seriously flawed and getting worse by the year.

So if you could speak again to this whole idea of credentialing, membership, I do think—and perhaps, Mr. Parmly, you want to speak to it as well—we have to come up with a procedural fix. It is not working. It may take 5 years; it may take 2 years. It may take a decade. But it is not working now when the High Commissioner for Human Rights calls the Commission—what were the words she used—“the conscience of humanity.”

Give me a break. It is anything but that when you have Sudan and Libya and Cuba and the People’s Republic of China; and, again, it also is the harbinger of where we are going with this criminal court.

By the way, we had a vote 282–137, 76 Democrats voting in favor of that amendment that was offered by Tom DeLay.

There are serious flaws here. Surface appeal be damned. We have to lay that aside and say, what are the real life implications of these bodies?

I was for the Rwanda court. I offered amendments in this Committee and in the Full Committee to increase the funding for Rwanda and for the specialized court for the former Yugoslavia. And that even had its flaws, as it turns out. They wanted to go after Wesley Clark for the bombing that took place.

I didn’t support the bombing, but Wesley Clark is no war criminal because our flights were flying higher than somebody they thought they should to minimize injury or death to our pilots. I hope members will trot out these supposed wrongs of the U.S.

I gave the speech on behalf of the United States in support of the Convention on the Rights of the Child at the U.N. President Bush, former President Bush, was the President at the time, and I was in New York and gave it in the Main Committee, or the Committee 3, I think it was. I support it.

But that all becomes a pretext.

There is something else that is afoot here. It is penalizing us for our human rights, audacity to speak to China and the others. I mean, what did Freedom House do that didn’t speak the truth? I mean, we are being treated like Freedom House and vice versa. I don’t know where they are on Kyoto.

But I have found, dealing with my European friends—and I will be in France again, coleading the delegation this July 4th, they love to take these little—package them together and say, that is the reason. No, look at them separately, because they are to be seen separately, I would respectfully submit.

So if you could speak—I would hope you would revisit that thought that you don’t think that there is a procedural fix. There



has to be, Mr. Secretary. We need to embark upon it, and that is the only good that I can see come out of this.

There is no credibility to the U.N. Commission right now. I want it to work. We all want it to work. There needs to be a minimum threshold, it seems to me, of behavior. I know that you don't lose your seat, you lose your voting rights in the General Assembly. They lose their voting rights for egregious behavior.

The Chinese torture, if you and I were arrested because we stood shoulder-to-shoulder with the Falun Gong or with a Catholic bishop, or with a Protestant or with a Buddhist, or with one of the Muslim Uighers, there is no penalty to the Chinese, and they at least should not be able to sit in judgment of other nations and muddy the waters the way they have done so masterfully.

Mr. PARMLY. Once again, I can be brief.

You asked a number of excellent questions, Mr. Smith. I think you saw the way we worked when we went together to Geneva. We are going to keep working together that way.

We can look for procedural fixes, but we are not going to change our human rights policy. We will continue to press our human rights policy. A lot of people say, well, it is because you were pressing a little too hard; you see, you shouldn't have gone for a China resolution this year.

And there may be a whole bunch of other factors, I am really not sure. Was it Kyoto? Was it the ICC? Was it—I don't know. Bill will talk about the procedural aspects. We can focus upon that.

But I would be concerned if I left here today, and I am looking at all the Members of the Committee with the message, look, you have got to modify your human rights policy. If you think we need to do that, then I would ask you to let me know.

We have a new Assistant Secretary who has just been confirmed and sworn in on Monday, and I want to take that message back to him. I think the Secretary will be very interested to hear that. We have to continue to be forceful, and if others are offended by that or bothered by that or made uncomfortable by that, well, then so be it.

Mr. WOOD. Mr. Smith, taking things not quite in the order you raised them, let me say that I have been in touch personally with the Wesenthal Center, and we have also been tracking the events regarding Freedom House and other NGOs. At this point, we are being very vigilant and we do not believe that their credentials are threatened in any way at this time.

We are continuing to watch and we are continuing to stay in close touch with them. It is certainly the case that they were being posed questions by some pretty disreputable people.

Secondly, regarding the functioning of the Western European and other groups—and this goes to a question from Ms. McKinney about what do we do with our allies as opposed to our opponents—there is growing dissatisfaction among the others of the Western European and Others Group with the apparently monolithic European Union preponderance in the group.

It is expected that this will get worse as the European Union continues to expand. Indeed under some of their proposals, they will be expanding into another regional group in the U.N., into the Eastern European regional group. Among other things, it is going

to create calculations that are going to make my life very complicated.

The short answer is, however, that rejigging the relationship of regional groups in one body would reopen the question of renegotiating the regional balance in every U.N. body; and so far, neither our dissatisfaction, nor the dissatisfaction of our colleagues in Canada, nor the dissatisfaction of our colleagues in Australia, nor the dissatisfaction of our colleagues in New Zealand, nor the dissatisfaction of our colleagues in Norway has been enough to say, "Let us open that issue up."

Third, the question of establishing criteria, substantive or normative criteria, for membership by member-states in these bodies. We are perfectly willing to work on that. We do work on it.

It is in many ways the definition of a campaign. When Sudan wants to run, we encourage the Africans who determine the African slate not to allow a government that gives Africa a bad name onto such a slate. We do that consistently and we are joined by others.

So far, we have not been successful. We will continue to work, but it is the decision of the African group to produce a unified slate that has Sudan on it.

I was responsible for orchestrating the campaign this year to keep Sudan off of the Security Council. The difference was that, although a unified African position was asserted to be behind Sudan at that time, on closer examination, there wasn't such a unified African position, and, as a result, Sudan lost.

So we are engaging in this kind of undertaking. We will continue to engage in it. I think that, over time, the regional groups will have to evolve to some degree. I just can't say that that is going to happen in a measurable time frame.

Mr. SMITH. How do we enfranchise Israel?

Mr. WOOD. Of course, we had the notable success last year of reaching agreement within the Western European and Others Group to include Israel. This is a step forward, and we have since then been working actively to include it in the Western European and Others Group in Geneva and other locations.

Part of the deal that got them into the WEOG was a slight time delay. Certainly, 2 years down the road, Israel would have been part of the Western European and Others Group for the purposes of the ECOSOC elections that we are talking about now.

Mr. SMITH. Thanks.

Ms. ROS-LEHTINEN. Thank you.

Mr. Payne.

Mr. PAYNE. Thank you very much. You can see this is quite an interesting discussion about where we go in the future. I think there are a few things very clear. Number one, we do not expect nor want the U.S. to lessen its strong support on human rights.

I think that if anyone has a notion that that is what any Member of this House is seeking, we want our position on human rights and our positions to remain as strong and even stronger than they have been in the past. So I want to make that very clear.

I think, though, that we are starting to live in a different type of a world. As we all know, globalization—you know, you are deal-

ing with world trade organizations, you are dealing with a lot of other complicated situations.

We all know—most of us believe that the next war will not be a shooting war. It is going to be economics; that is pretty clear. I think maybe—this missile defense business is something that I think we are on the wrong track with.

But be that as it may, I think it is going to be economic, and the economic part is, I believe, where this European Union, our friends, they are going to be our allies. If there was ever a shooting, I know we certainly would be able to depend on them.

We don't believe that the shooting war business is in the future. It is not in anyone's interests. It is too costly, and I think too much of a devastation on life and property. So the next kind of thing will be economic.

And the EU going to one currency, going to sort of courts, going to making the Airbus and competing against Boeing and actually kind of winning as the European economic engine; because the war is going to be, who is going to get the developing world. The developing world will always be developing. Things will get a little bit better.

Hong Kong, after World War II, they couldn't buy a thing, now there is nothing that they can't buy or sell, I guess. So we are going to see developing countries like what we saw in Korea and Taiwan, and things go on. And so the standard of living is going to increase in these developing countries. Then they can buy products; and the products—the war is going to be, are they going to buy products from the U.S., with our 285 million people, or are they going to buy products from the EU with their 300 million people. I believe that is where the friction is going to be.

I think that—like I said, if there was some real military threat, there is no question that Europe and the U.S. are one in thought and against dictators, and so forth. I think that this business kind of goes beyond that, and I think that is what we, in my opinion, need to start thinking about.

Mrs. McKinney certainly give a litany of issues of probable irritants, I know they have been irritating things to me. There are things she mentioned, a few others.

I think the whole fact that we don't—we won't sign the Conference on Elimination of Children Soldiers. We don't use children soldiers. See, the kids in Sierra Leone, they are 6, 8 and 10, but the Pentagon doesn't want to be constricted from recruiting a 17-year-old in high school.

So I think we look at a very narrow, a very narrowly perceived issue, and we don't support something that everyone knows that we should be against, children soldiers. And I know we are, but we won't sign the convention.

The whole question on desertification. It took 10 years for the U.S. even to say, we are against desertification. The Senate on a voice vote finally said, we think irrigation is okay. I mean, we don't like the desert encroaching upon our land. It took a decade. We were the last ones to join the World Convention on Desertification, or decertification, whichever term they use.

So I believe that we really need to take a look at this future—the question of U.S. soldiers can't serve under any other U.N. com-

mander. I mean, while you get the other 180 countries, or however many there are, to say, it is all right for all of us to serve under somebody else; except the U.S. says, we don't do that, this is not our way. And we don't send troops anyway. But we still say we shouldn't.

So I do believe it is going to be a very sensitive future.

We came up with \$200 million for the World AIDS Fund and took it from the Development Fund for Africa and Development Bank—the Latin America—no new money. It is disgraceful, 24 million people have the HIV virus, not our fault or our need to end AIDS in the world, as we know. But to save \$200 million, which is going to be taken from other things, and the UNHCR had to reduce itself by about 18 percent because we sort of dropped off.

Now, we certainly can't support everything in the world; there is no doubt about it. However, when the U.N. started, we paid 50 percent. The world was going down the tubes. The Marshall Plan came and built them up, 50 percent. We went down to 33; we then said we would do 28. Now we say 22—is it 18?

It is like income tax; what do you want to pay, 18 or 12? It doesn't make sense. And with the peacekeeping, the same thing.

Thirty-three is too much, we are down to 30. Not only that; we said, your accounting is different. So we may be a couple million off.

So I think that we need to regroup. I think that this might be another wake-up call. I do believe we are on the right track. I think that you have done an outstanding job. We need to continue to press for Aung Sun Suu Kyi, keep trying to get the the Rwandan genocide to be brought to justice and all of those other things.

However, I do think that we are going to have to be more sensitive. We are going to have to be more—less selfish because we are becoming a Nation that is selfish, because that Statute of Liberty is over with. We don't look for the huddled masses and help out our people.

\$200 million, that was all that we could give out for the AIDS pandemic. I mean, it is disgraceful. It was embarrassing. It is not even new money. And money is not going to cure it at all, but at least we say \$2 billion and don't pay it, we don't pay anything else, just say it; it might make people feel better.

I really don't have any questions. I have been waiting all day to say this.

This Committee takes more time. We have distinguished people. I have been buzzed eight times, believe I should have been out of here, but I—it is just so important. And I do commend you, gentlemen, for the outstanding work that you have done.

I don't know how we guarantee—I could also—I think for the first time, yet this time, that I commend President Bush, I actually commend on the record for saying we should not take—we should not walk out of this body because we didn't win a vote.

I ran three times for Congress before I got elected. I didn't want to quit Congress or quit trying, you see.

So I think it is a maturing, it is a maturization. It is a new globalization; it is a new world. We are going to have to figure out how we know only the king on the hill anymore. You have the Europeans on the same type of a hill, our friends.

And I think that our big task is going to be not to really finally alienate our friends totally, because we are really going down a path of having—I just came back from France yesterday. I was in Italy and all. It is unbelievable, the way that they are just saying what has happened to the U.S. We don't even understand them anyway. It might be them.

This is the world we live in, and we need to wake up. And our diplomats of the past—I hope we bring some future people into the new Administration. The Cold War is over, and we have to look at the new economic war.

Mr. PARMLY. Sir, I want to thank you. First of all, thank you for your comments. You are right, Bill and I are probably too old to be serving in this career, and I am sure we will move on.

Mr. PAYNE. I am older than you.

Mr. PARMLY. We will take care of that in good time.

I ask Bill's indulgence and the Committee's indulgence. I want to comment on a few things that you mentioned, because I think from my bureau's perspective, it is exactly the direction that we should be heading in.

You comment that we live in a different world. I think that that—people have said we have been slipping back on human rights, and Congressman Lantos said that we are going through a bad patch.

In fact, I think there are a number of trends that point in the opposite direction: the increasing circulation of information, not just the Internet, but the increasing availability of information. Congressman Smith knows that Radio Free Europe was one of the key factors in bringing down the Wall, because people knew what was really happening.

Well, now people all over know what is happening. And you see it in India, and you see it in China. You see the governments tremble in the face of their realization that people know what is going on.

So the challenge to us, and we would like to work with you, we would like to work with this Committee, is to figure out ways to plug in those people.

It is also a challenge, I think—now addressing the Commission on Human Rights, Madam Chairwoman—the challenge for the Europeans will be next year, they are going to be the bulk of the “we are” group. Let us see what they do. And, you know, we may be gravely disappointed. I hope not.

Ms. ROS-LEHTINEN. Thank you. Thank you so much. Thank you, Members, and thank you panelists.

In the interest of time, I am going to submit additional questions in writing for the witnesses to respond to. We thank you so much for being with us today, Mr. Wood and Mr. Parmly.

And now I am pleased to introduce our private panel. We will commence with the testimony of the Honorable Jeane J. Kirkpatrick. As all of us know, Dr. Kirkpatrick was the first woman appointed to serve as Permanent Representative of the United States to the United Nations and as a member of Ronald Reagan's Cabinet and the National Security Council.

For this and related government service, Dr. Kirkpatrick was awarded the Medal of Freedom, this Nation's highest civilian

honor, in May 1985. After her service in the U.S. Government, she returned to her previous positions as leading professor of government at Georgetown University and as Senior Fellow at the American Enterprise Institute.

And we thank you for joining us today, Dr. Kirkpatrick.

We had promised her that she would be out of this Committee 15 minutes ago. So after her testimony, after I introduce all of the panelists—and please come up and take your spots—we will open it up for questions of Dr. Kirkpatrick so she can go on to her previously scheduled appointment.

She will be followed by Nina Shea, who is our second speaker on the private panel today. Ms. Shea is a woman who wears many hats in the human rights community. She has come to us today as a former public member of the U.S. delegation to the 57th session of the Human Rights Commission in Geneva.

Ms. Shea also serves as a Commissioner to the U.S. Commission on International Religious Freedom and is an international human rights lawyer. Her focus over the last 14 years has been on issues of religious persecution, bringing her to direct the Center for Religious Freedom at Freedom House, America's oldest human rights group, that was founded in 1941. She is no stranger to our Subcommittee.

We thank you, Nina, for being here.

Also joining us from Freedom House is Ambassador Mark Palmer. Ambassador Palmer served as U.S. Ambassador to Hungary and as Deputy Assistant Secretary of State, in charge of U.S. relations with the Soviet Union and East Central Europe, and Director of the State Department's Office of Strategic, Nuclear and Conventional Arms Control.

He is currently the President of Capital Development Company, which supports local partners in launching new enterprises in Washington, DC, and in the capital cities of Europe and Asia, as well as a board member of the National Endowment for Democracy.

We welcome Mr. John Ackerly, President of the International Campaign for Tibet. Mr. Ackerly received his law degree from American University and has worked with the Freedom of Information Clearinghouse and McTeer & Bailey, a Mississippi-based law firm. He has also done work with the International Committee of Lawyers for Tibet, the International Human Rights Law Group and The Lawyers Committee for Civil Rights Under Law. Thank you, Mr. Ackerly, for being here.

Lastly, we are joined by Mr. Carlos Salinas, who we have also had the pleasure of having at our Subcommittee before. Mr. Salinas has been involved in human rights and social justice issues since his college years at the University of Pennsylvania, where he obtained his B.A. in Economics with a minor in History. He worked in Colombia in 1986 and obtained his M.S. in Latin American studies at Georgetown. For more than 10 years, Mr. Salinas was a staff member of Amnesty International USA, most of that time as a lobbyist on human rights issues in Latin America and in the Caribbean.

He recently resigned from Amnesty after having served as more than 1 year as Acting Director of Government Relations, in order to pursue independent projects.

We welcome all of you here. We will enter your full statements into the record. We will ask you to summarize, and we will be a little bit more brutal with the time limits for this go-around.

Dr. Kirkpatrick is recognized first.

We thank you so much for joining us, Ambassador.

**STATEMENT OF THE HONORABLE JEANE J. KIRKPATRICK,  
SENIOR FELLOW, DIRECTOR OF FOREIGN AND DEFENSE  
POLICY STUDIES, AMERICAN ENTERPRISE INSTITUTE AND  
FORMER U.S. PERMANENT REPRESENTATIVE TO THE  
UNITED NATIONS**

Ms. KIRKPATRICK. Thank you very much, Congresswoman Ros-Lehtinen. It is a privilege and honor to be here to testify before this Committee and on this subject. The Committee is distinguished and the subject is vitally important. I will try to summarize and be brief.

I begin by noting what has already been made clear. This is the year that the repressive dictatorships of the world have made the most progress ever in their effort to effectively destroy the United Nations Human Rights Commission, which, when it functions as it was intended, is one of the truly useful bodies of the United Nations in assisting the victims of repression and tyranny.

As almost everyone knows, the United States was a founding member of the Human Rights Commission, and also played a critical role, in the person of Eleanor Roosevelt, in the establishment of the Human Rights Commission. So it is ironic that we were not reelected to participate in the Commission.

Virtually all the dictatorships in the world will be participating in the Human Rights Commission next year, while doing all the sort of things that dictatorships do—repressing others, jailing them, denying free speech, expression of assembly, trying to bar them from taking part in Commission activities. These victims are working hard for greater personal security and rule of law, because they have suffered the consequences of its denial.

Charges have been brought against Freedom House, of which I have been a member, whose annual *Survey of Freedom in the World* is greatly resented by the repressive regimes in the world. They do not like Freedom House's *Survey of Freedom in the World*.

I am happy to say also that our government has a lot of respect for Freedom House's *Survey of Freedom in the World* and regularly takes careful account of it in making a variety of decisions.

I remember that we worked quite hard for quite a long time to secure the accreditation for Freedom House, so it would be eligible to participate in the Human Rights Commission; and now it is threatened with disaccreditation.

You know the charges are the regular ones. It has been charged regularly with being too concerned about victims of human rights abuses by powerful nations. China is leading the campaign against Freedom House, and it leads the campaign against Tibet under some different circumstances.

It is interesting to me that there is this year an accrediting committee of the 19 like-minded who will consider the charges against these NGOs, including Freedom House and Christian Solidarity International, which I understand is directed by Dr. Franklin

Graham who is also threatened with disaccreditation. China is asserting about them that they must neither abuse their consultative stakes nor act against the principles and purposes of the U.N. charter.

I assure you, for 5 years I virtually carried a copy of the U.N. charter in my purse, and I could quote most chapters and verses on most any subject. And I assure you that Freedom House is not violating, nor are any of the other NGOs which are threatened today with the disaccreditation, any chapters of the U.N. charter. It is quite the contrary.

I wish the Chinese delegate would carry a copy of the U.N. charter in his pocket and read it on a regular basis. He might have a better appreciation of what it provides.

For several years, we have all known that the U.N.'s most repressive regimes have sought to hamper the Human Rights Commission by joining it. That is a very interesting tactic, and a number of us could see it coming as the repressive regimes started working to get themselves elected to the Human Rights Commission.

In that Commission, of course, they can intimidate and follow the work of and block action by other country members who are interested in serious work on human rights in the Human Rights Commission. That is really the issue, whether there will continue to be serious work on human rights in the Human Rights Commission.

Congressman Tom Lantos, when he was here, referred to what was happening as "Orwellian in its character." It is Orwellian that these most repressive regimes should all have worked to find themselves good cynosures on the U.N. Human Rights Commission.

When I first heard about the United States being defeated for a seat next year, I unfortunately jumped to the conclusion that it was perhaps because we had not had a full-time, top-level U.S. Ambassador heading our team for 4 or 5 months, and I do think that was unfortunate.

However, as I thought more about it, I realized that I probably wouldn't have ultimately made much difference if we had a full staff working at full steam because we have been losing politically in WEOG.

It is a certain kind of new EU politics that is causing us to lose. This event is similar to when we failed to be elected to the Committee on the Status of Women, which we barely remember today, but it seemed very important when Madeline Albright was our first Secretary of State and we were preparing for the meetings in Beijing. There, too, they filled all three seats, because they have so many more votes than we do.

Understand, there is this other issue that no one ever mentions except me in a public place. Maybe it shouldn't be mentioned in a public place, but the EU not only blocked votes, but they have 15 votes now to our 1, and those 15 votes cannot only be voted, but they can be promised and traded. And they can be used to win more votes. That is a very serious handicap from which we suffer and from which I fear we are likely to continue to suffer unless some kind of action could be taken.

It's reminiscent of when Harry Truman told Joseph Stalin that it was not going to be acceptable to us that the Soviet Union had



16 votes while we had 1, and that was quite debated in the days that the U.N. was established. It might be worth looking back at that debate.

There was a compromise, and that is how the Ukraine and Belarus received recognition as full states and with positions on the Security Council when it was their turn. They were not in any sense “full states;” they were simply satellites of the Soviet Union. And that gave the Soviet Union a kind of advantage, but it was a 3-vote advantage not a 15-vote advantage.

The other explanations offered have also been mentioned here. We talked more about human rights than other countries and we are more likely to bring complaints and to push them. We are more likely to be sympathetic to countries and peoples with terrible human rights problems, such as Tibet. It is a people with a terrible human rights problem in China.

Or Israel, the United States is the only country in the United Nations that reliably supports Israel against unfair and unreasonable charges.

What happened this year is very interesting, I think. There were five resolutions passed this year concerning Israel by the Muslim Islamic group mainly, 28 states voted for condemnation of Israel. None of those resolutions of condemnation merited much respect, and some were just outrageous. While 28 states voted for the condemnation, the U.S. and Israel (and, on several votes, Guatemala) voted no. The EU and Russia abstained.

The practice of abstaining on tough issues is very important, and it is one of the factors that most clearly distinguishes the United States’ behavior on human rights issues from most of the EU behavior on human rights issues. I am not sure what we can do about this.

In my prepared text, I quoted George Kennan, who said in a famous warning of 1954 which I think is relevant to our predicament, “I view with skepticism our chances for exerting any usual influence unless we learn how to create respect for our possible disfavor, at least as great as the respect of our possible favor.”

He then went on to quote Thomas Jefferson in his consideration of the utility and sometimes the necessity of peaceable coercions, the use of peaceable coercions in the practice of diplomacy. I don’t know if peaceable coercions would be useful to us at this stage.

I feel quite certain, however, that it will not be easy for the United States to reclaim a position on the Human Rights Commission. I should say that the reason we had always had positions on the Human Rights Commission was not because we were getting along better with other nations then; it was because of something called the Permanent Members Convention.

Under the Permanent Members Convention, it was provided that the five permanent members could claim a seat on any committee or commission of the United Nations that they chose to. That has been respected in the U.N. from its founding until virtually now. It occasionally, in the post-Cold War years, has been ignored. Notice that Russia was elected, for example, and had no problem being reelected to the Human Rights Commission.

We also have an understanding with our friends in the EU that in the WEOG the United States, because we represented another

continent or because we were a superpower, could count on being one of three WEOG votes, as it were, in normal elections.

Both of these conventions were nonoperative this year, and that created problems we have not had before.

I will just stop there. I think it is going to be very hard work for this Committee to think this through and try to reach some useful and, perhaps, even conceivably helpful policy on it.

[The prepared statement of Ms. Kirkpatrick follows:]

PREPARED STATEMENT OF THE HONORABLE JEANE J. KIRKPATRICK, SENIOR FELLOW,  
DIRECTOR OF FOREIGN AND DEFENSE POLICY STUDIES, AMERICAN ENTERPRISE IN-  
STITUTE AND FORMER U.S. PERMANENT REPRESENTATIVE TO THE UNITED NATIONS

Thank you, Mr. Chairman, for inviting me to testify on this vitally important issue.

Mr. Chairman, This is the year that the world's most repressive dictatorships have made real progress in their effort to destroy the United Nations Commission on Human Rights, which, when it functions as intended, is one of the truly useful bodies of the United Nations in assisting the victims of repression and tyranny.

As almost everyone now knows, the United States, which had been a founding member of the United Nations Commission on Human Rights from its founding in 1947, was not re-elected to the Commission and so will not be eligible to participate in its activities for the coming year.

But virtually all the dictatorships in the world will be participating in the Human Rights Commission next year doing the sort of things that dictatorships do—repressing others, jailing them, denying them free speech, press and assembly and trying to bar from taking part in Commission activities those NGOs which are most active in promoting free speech, press and assembly, personal security and rule of law. Charges have been brought against Freedom House, whose annual survey of freedom in the world is greatly resented by China among other tyrannies who with support of Cuba and Sudan brought the charges against Freedom House and the Christian Solidarity International, a U.S. Protestant group.

An accrediting committee of 19 “like-minded” will consider the charges against Freedom House. They will seek to revise the rules on accreditation to the Commission making it impossible for victims of repression to speak to the Human Rights Commission and to circulate “politically motivated material” describing their treatment.

In the Human Rights Commission today, accredited NGOs can invite persons of their choosing, including victims of human rights’ abuse, to speak at the forums, a right granted by the Economic and Social Council (ECOSOC). China would like to put an end to these procedures.

China has insisted their “national sovereignty” be respected. “They must neither abuse their consultative stakes, nor act against the principles and purposes of the U.N. Charter.”

China has also tried to have the United Nations and the canton of Geneva ban demonstrations by the Falun Gong outside the U.N. Headquarters. They have made three written charges:

1. They have complained that Freedom House violated the rules concerning Chinese interpretation.
2. They asserted that Freedom House included a terrorist group (which is not true).
3. And Russia criticized Freedom House for interference in Chechnya.

For several years the U.N.’s repressive regimes have sought to hamper the Human Rights Commission by joining it and each year more repressive regimes achieved membership, but the solidarity of democracies has prevented the dictatorship from gaining control. But the margins have grown smaller and the straight speaking more timid. Often it has been the United States which has taken the lead in gathering the material and the votes to make the case against tyranny and repression inside the Human Rights Commission.

That is doubtless the reason that a major effort was made this year to eliminate the U.S. presence from the Human Rights Commission. The effort was successful, as everyone now knows. It was successful because several of the Western democracies, with whom the United States has worked to make the United Nations useful in defense of the values for it was founded, dropped out of the struggle.

As in all U.N. Commissions, states are nominated through their participation in a geographical group. The United States participates in the WEOG group (Western Europe and other Governments). Moreover, through the history of the United Nations, the United States and any other permanent member has served on any committee it chose to be on, under the “permanent members convention”. France, the United Kingdom, Russia, China and the United States have always been assigned in this way until Spring 2001.

What happened?

I initially hazarded the guess that the absence of a chief U.S. Ambassador for four to six months had left the U.S. government less well informed, less active and more vulnerable to ambush than we otherwise might have been. That may well have been a factor, but reflecting further on the issue, I conclude that what happened could have happened even if we had had a full complement of representatives in the U.S. Mission and the Department of State.

I also looked at a previous occasion when the United States was denied re-election—to the U.N. Commission on the Status of Women (May, 1994).

Its seats were allocated among regional groups and then subjected to election in ECOSOC. There, too, the U.S. was apparently defeated by its friends, principally because its friends in the European Union filled all three seats.

This year most American analysts start from the fact that three EU nations took all three seats—France, Sweden and Austria—on the Human Rights Commission and the International Narcotics Control Board—France, Austria and the Netherlands—as evidence there was a snub of Washington by the European Union. On the Human Rights Commission, France had 52 votes out of a possible 54, Austria 41, and Sweden with 32. The United States trailed with 29.

I believe the United States lost its seat by the unraveling of a longstanding understanding with Europe that provided that the United States would hold one of the three seats reserved for Western nations and that happened because of the consolidation of the EU.

Other explanations offered for the U.S. defeat in human rights explained it as a consequence of the U.S. habit of mounting a vigorous case against human rights abuses, as when in the session just past American delegates targeted both China and Cuba, both of whom then vigorously lobbied against the United States.

Congressman Henry Hyde, (R. Illinois), the new chair of the International Relations Committee in the House of Representatives, described the U.S. defeat as “a deliberate attempt to punish the U.S. for its insistence that the commission will tell the truth about human rights abuses wherever they occur.”

Hyde was probably right. The U.S. habit of telling the truth in the United Nations about human rights violations of some governments against their citizens is almost surely the reason some countries opposed the U.S. re-election to the Committee.

Israel is also an issue. The United States is the only country in the United Nations that regularly defends Israel against unfair attacks. This year only the U.S. and Israel voted nearly alone (with some help from Guatemala) against five resolutions condemning Israel’s “disproportionate” use of force in the “Palestinian territories” and calling for a halt on building new Jewish settlements and denouncing Israel for various crimes. The EU, Russia and few others *abstained* against this calumny. The result was a vote of 28 states *for* condemnation, 2 Israel and the U.S. and sometimes Guatemala against, and 22 abstentions.

There is another factor. In recent years, more and more governments, who are themselves infamous human rights violators, have managed to get themselves elected to the human rights commission (thereby acquiring a vote and influencing outcomes): Libya, Syria, Sudan, Sierra Leone, and Uganda. Vietnam, China and Cuba are also members. They would like to prevent membership of any country which actually wants to talk about human rights abuses.

But the United States lost in the WEOG group.

The Ambassador of France attributed the success of his country in the Human Rights Commission to the French practice of founding its foreign policy on “dialogue and respect.” But it is also based it on the French habit of not criticizing any country no matter how heinous their abuse. China agrees with France that the French way is better. China suggests that the United States should “stop using human rights issues as a tool to pursue its power politics and hegemonism.” Of course, the United States can do that when China stops using its power to violate its citizens’ human rights.

The U.S. government has no friends among these countries who regularly deny their citizens freedom and due process. But some of our European friends do and they treat them well. It is called “real politik” and it works.

There is not much question that the distance between the United States and its Western European allies has grown in the last decade. The European press shows

their displeasure with the United States in a steady stream of articles highly critical of the "American way." The criticism has intensified since the inauguration of the Bush administration which undertook to move America rightward at a time when all but two of the 15 member states of the EU have socialist governments.

The United States will never be able to achieve its goals or even to work for them effectively toward its goals in the U.N. commissions, if, in addition to opposing our adversaries, we must also compete with our friends. *Our one vote can never win against the EU's fifteen.*

Opposing the United States at the United Nations is easy because it is risk-free. There have been few consequences for opposing and attacking the United States inside the United Nations. The United States has a habit of acting as though everything matters to us, but nothing matters much.

George Kennan's famous warning of 1954 is clearly relevant to our predicament, but nobody has heeded it. In 1954, he wrote, and I quote:

"I view with skepticism our chances for exerting any useful influence unless we learn how to create respect for our possible disfavor, at least as great as the respect for our possible favor."

Kennan knew the behavior of nations is not normally motivated by disinterested gratitude or friendship, but rather by the hope of gains and the fear of loss. Kennan knew that it was important for a nation seeking influence to remember what Thomas Jefferson had called "the peaceable coercions" of international politics.

What could we do?

Several members of the Congress have offered suggestions about "peaceable coercions" the U.S. might utilize. The Speaker of the House, J. Dennis Hastert, offered a suggestion when he said the U.N. action might force lawmakers to reconsider a carefully wrought agreement worked out between the Senate and the Clinton administration to pay outstanding American dues to the United Nations. He noted that the House was expected to take up the issue for the first time next week as part of the State Department authorization bill.

The complex politics of the United Nations requires cultivating and maintaining relations with a hundred different countries in the United Nations, inside the United Nations, and outside the United Nations. But these relations need to be reciprocal. They need to be based on mutual respect and not on our respecting others while others fail to respect us. That reciprocity has to be continuously renewed. It doesn't require that the United States dominate, or impose its view, or carry the day on every issue in the United Nations, or even most issues in the United Nations. In fact, in order to be effective, we have to recognize the interests of other nations, we may sometimes need to give priority to their concerns where issues are more directly relevant to their vital national security.

Our effectiveness in the United Nations, or, I believe, the world, does not require that we impose our world view on everyone else. It does *require that we secure a decent respect for ourselves and our most important principles and interests.*

Mr. Chairman, thank you.

Ms. ROS-LEHTINEN. Thank you, Dr. Kirkpatrick.

How can the U.S. use our position in the U.N. General Assembly and the U.N. Security Council to build those coalitions that you have talked about, and relations with members of the Commission, that would assist our efforts in that body; and how can we use our position within the Organization of American States and the Community of Democracies to assist our efforts at the U.N. Commission?

Ms. KIRKPATRICK. Thank you, Congresswoman Ros-Lehtinen.

I believe that that is very difficult, too. Typically, we are less effective in the General Assembly than we are in commissions and committees, and certainly than in the Security Council. The General Assembly operates more completely and regularly on the basis of bloc voting and bloc positions and with less consideration than other bodies of the U.N.

So I am not hopeful about what we will be able to do in the GA. I hope we can do something. I am always hopeful, but I am not very optimistic.

I think the OAS is a more useful potential body for the United States and perhaps one in which we can work with more hope of success and effectiveness. The OAS operates under some very different rules, has a different membership, and is not already committed to blocs. Issues like the nonbloc, for example, is a relic of the Cold War which is preserved because its members find it useful for some purposes for some time. It is certainly not useful to us.

But I think that the big blocs, of which the nonaligned group is an example, are political institutions which contribute to sort of reflexive and thoughtless voting in the U.N. and debating a lot in the U.N.

What was the last question? You had another.

Ms. ROS-LEHTINEN. About the OAS.

Ms. KIRKPATRICK. I think the OAS is likely to become more useful to us. I think it has been useful. For example, in American efforts in Haiti. I have looked at that record rather closely. And I believe the OAS is an institution to which we should perhaps give more attention and in which we should work harder.

Ms. ROS-LEHTINEN. Thank you.

I am going to—before I recognize Ms. McKinney for her question, I will ask Congressman Smith to chair the rest of the Subcommittee session. Unfortunately, I have a speaking engagement off the Hill, and I will try to be back, but I am not so sure.

Thank you, Mr. Smith.

Ms. McKinney.

Thank you to all panelists for being here today. Thank you.

Ms. MCKINNEY. Thank you.

Dr. Kirkpatrick, your written testimony, the last line just literally sent shivers down my spine, the last sentence is, “Our one vote can never win against the EU’s 15.”

What that suggested to me was a whole new orientation in our foreign policy and a whole new orientation as to how we view the Western Alliance. Since you started it, could you just sort of explain the next part of that that remains unstated?

Ms. KIRKPATRICK. I have been a strong supporter of NATO, the bodies of the Western Alliance all of my adult life. I most recently was a strong and active supporter for the expansion of NATO in part in order to keep it relevant and alive. And I hope very much that NATO remains a vital alliance and a vital element of the U.S. orientation in the world.

I, too, have carefully read the Treaty of Nice. I even examined some of my students on it at Georgetown University before the end of the year. I think there are going to be problems. The Treaty of Nice was presented initially by President Chirac of France. It is difficult to believe all the language that it presents. I believe it doesn’t mean what it says, because it reads as if they are viewing us continually in a kind of competitive and not in a wholly friendly fashion.

I think you generally ought to take people’s word for what they mean. Mr. Chirac is a smart man, and I suppose he means what he says. Now he has said he didn’t mean what he said.

So, when people read it like I do, they are not reading it right? I find it difficult to read it any other way, but maybe I am wrong,

and maybe there won't be the kind of developing problem between the U.S. and our EU participants and colleagues and allies.

I think that the inclusion in NATO of some of the Eastern Europeans, the new democracies from Central Europe and Eastern Europe, may help to change this somewhat the—since there is almost a competition between the Western European members on NATO, above all between France and Germany. And the U.S. that prevails today I think may be more helpful—and maybe not.

I believe that our closest colleagues and our closest allies and best friends, as well as top trading partners in the world, are the Western Europeans. I hope very much that we can keep it that way.

Ms. MCKINNEY. But the Administration has just conducted a review, or is in the process of conducting a review that encourages us militarily to look to the east. And so at a time when we are refocusing our orientation to the east, we may have an abutting problem to our west, and so I think we have always championed a United States of Europe. We have championed European integration.

Ms. KIRKPATRICK. Absolutely.

Ms. MCKINNEY. So now at the same time I hear, or I think I hear a fear at the same time, of what U.S. integration really portends for the United States.

I would just like to say before you respond ECHELON, the European Union sent some parliamentarians here and they were interested in ECHELON, the satellite spy network that spies on all of yours and my e-mails, faxes, telephone calls. Any kind of communication that you have with some of your friends that you think is private, it is not private. These parliamentarians were totally dissed by the Bush Administration.

They had their appointments canceled at the last minute, and they got here and they could only—they could only meet with Members of Congress who were interested in meeting with them; and of course, because I value my little privacy that is left on the Internet, I met with them. But the allegation is that the United States was using ECHELON for commercial purposes and that they turned that information against Airbus and gave it to—it was a Saudi bid—and gave it to Boeing, I believe.

So for an allegation as serious as that, that we would turn our back on our allies when it came to making a buck, then how can we expect them not to view us in this way?

I haven't read the treaty, but I will go and read it.

In this kind of competitive way, you know, you sort of get what you give or what goes around comes around.

Ms. KIRKPATRICK. Right. I would love to comment on it.

I would love to comment on that. I don't really know anything about ECHELON. What I know about it I heard from NPR and what I have read in the newspaper. And I did, by the way, read in the newspaper that these aren't governments. They were sort of a self-appointed committee of European Parliament, as I understand it, and they did not really have appointments. They weren't really—

Ms. MCKINNEY. That is not what they say. I met with them. They say they had an appointment, and the appointment was withdrawn.

Ms. KIRKPATRICK. I take it they were not operating from a high-enough level.

Ms. MCKINNEY. Answer this question. I know you do not want to be in the unenviable position of having to bash the Bush Administration.

Ms. KIRKPATRICK. I am not going to do that, Congresswoman.

Ms. MCKINNEY. I know you are not going to that. Let's just say that wouldn't it have been to the Administration's benefit to meet with these people who are charged with producing a report that now is going to be critical of the United States which is going to deepen those feelings that we say we want to change?

Ms. KIRKPATRICK. Let me just say this. Since I didn't meet with them, and I don't know them, and I don't know their mandate I will say simply that it is very common that one government does not give easy access to another government of high-security activities, France being a perfect example.

France has one of the highest security operations in the world. And there is no Committee of the Congress that can go visit France and ask for access to their most secret factories and high-tech activities of all kinds.

I went to see the *Ronald Reagan* christened, let me say. It is the largest aircraft carrier in the world. I sat next to a French director and president of one of the major French high-tech companies, Dassault. And he informed me there that they made all the software for the *Ronald Reagan*. Now that is interesting, isn't it? And then he told me that they made all the software for a number of the highest tech U.S. transport and weaponry.

So there are obviously Frenchmen who have plenty of access to all the high tech that Americans have access to and I suspect that partly what went on in them not getting the access that they hoped for was that they hadn't really gotten through the right channels.

Of course, the ECHELON, as I heard it from NPR, is not just an American activity anyway. It is British and French.

Our European allies have never practiced nor advocated any kind of sharing of technology and weaponry and transport. They really never have. That is one of the reasons I was so shocked when I learned that the French had made all the software for the *Ronald Reagan*.

Mr. SMITH. [presiding.] Thank you very much.

The Chair recognizes Chairman Gilman.

Just for the record, we have been advised that the Committee Room—our lease on this room expires at 5:30. Another Committee is coming in. So I will submit some questions to the Ambassador, if I could.

Mr. Gilman.

Mr. GILMAN. Thank you very much; and welcome, Ambassador Kirkpatrick. Thank you for taking the time to be here. I know that your time is important as well, and you requested the chairman to give you leave, and we are pleased at your review. We thank you for your good work during your tenure in the U.N. as our Amba-

sador. You have certainly gained great experience in how we should be reacting in the U.N.

This has been an abominable situation when this cabal of dictators, dictator nations and violators of human rights took us off the Human Rights Commission, one that we helped to create initially. Let me ask you a question I asked earlier of some of the prior panelists. Is it possible to establish some criteria for membership that would render ineligible countries whose governments are persistent human rights violators? And if so—

Ms. KIRKPATRICK. Congressman Gilman, I think we might demand they achieve a certain score on the Freedom House *Index of Freedom*. I can't think of a criteria that would be satisfactory to us that would be acceptable to a committee of the United Nations.

Mr. SMITH. Would you yield?

As you probably know, Henry Hyde's State Department authorization bill has a section in this that says to a participating state that state needs to allow governmental representatives like a rapporteur or nongovernmental people working on human rights to have access to that country. That is an absolute, bare minimum type of threshold, but it seems to me that if they don't allow of groups that were represented here or the Red Cross to go to prisons you shouldn't sit on the Human Rights Commission.

Ms. KIRKPATRICK. That is right, and the Red Cross might be an example. It might be conceivably an acceptable and therefore useful first move. I didn't know that was included within the bill, but I am pleased to know it is.

Mr. GILMAN. One more inquiry, Madam Ambassador. What specific recommendations did you offer to the new Administration to begin addressing the problems of allowing resolutions to be passed by consensus, understanding that violators to human rights are not named in open debate?

Ms. KIRKPATRICK. Right. I think that is very serious. My advice to the new Administration is that the United States should only participate or seek to participate in a Human Rights Commission which is meaningful, in which the actual abuses of actual human rights victims are aired. And that among other things is incompatible, of course, with the kind of resolution that you have just proposed which practices is further debilitating the work of the Human Rights Commission.

I don't think we should accept such a seat on a Human Rights Commission that was meaningless. I don't think we should seek a seat either.

Sometimes in the U.N. Orwellian things happen. It happened in UNESCO, organization that was signed to be one of the principal global defenders of free press and the information exchange, yet became the bastion to prevent free press and information exchange. We don't want to be part of it.

Mr. GILMAN. Thank you.

The title of this hearing is, "Has the U.N. Commission on Human Rights Lost Its Course." It appears it has been going downhill. How did we get to where we are, and what should we do to turn it around?

Ms. KIRKPATRICK. That is the job that all of us will be thinking about and working on for the foreseeable future.



Mr. GILMAN. We welcome any recommendations. Thank you.

Ms. KIRKPATRICK. I will be in touch. Thank you.

Mr. SMITH. Ambassador, Mr. Gilman, Ileana has just worked it out so that the Western Hemisphere Committee has found another room, so we physically do not have to be out of here by 5:30.

I have one brief question. It is very important if you would reflect on it, or maybe you already have an answer.

As I mentioned earlier to our distinguished panel, since the EU has so radically changed and it is a superstate now and, as you point out, with some 15 votes, whatever the number is, is it time to be thinking about a different blocking? Perhaps Canada, Mexico, the U.S., or some other? Why are we so—that doesn't diminish our support or our trading capabilities and friendship with the Europeans, but they have changed, and they have shown profoundly unfriendly attitudes when it has come to some of these votes that we should not just look askance to. Should we have a new regional bloc ourselves?

Ms. KIRKPATRICK. I don't think that is easy, for one thing; and I am not sure we can do it. For a second and third, I am not sure we would want to when we thought it through. It is a very big question. We have to think very hard, I think. It bears thinking about.

Mr. SMITH. Ambassador, thank you so much for your testimony, and thank you for being here.

Thank you to the panelists for your patience. I think, judging by the participation by the Subcommittee, including Members who are not on the Committee, there is a great deal of interest; and we look forward to your testimony.

Ms. Shea, if you could begin.

Mr. GILMAN. Forgive me. I have to go to another hearing.

**STATEMENT OF NINA SHEA, DIRECTOR, CENTER FOR RELIGIOUS FREEDOM, FREEDOM HOUSE, AND FORMER PUBLIC MEMBER OF THE U.S. DELEGATION TO THE U.N. HUMAN RIGHTS COMMISSION**

Ms. SHEA. Thank you, Mr. Chairman and Ms. McKinney. I am greatly honored to have this opportunity to testify about the important U.N. Human Rights Commission whose last session I attended as a public member of the U.S. Delegation.

I have been an international lawyer for 22 years and over that period have attended many sessions of the Commission, including as a public member of U.S. Delegation in 1993. I appear today in my private capacity as the Director of the Center for Religious Freedom of Freedom House, and the views expressed in the testimony are my own. They do not reflect the views of the U.S. Delegation, the Department of State or the U.S. Government.

I would like to abbreviate my remarks but ask that my written testimony be included.

Mr. SMITH. Without objection, your statement and all of those of our witnesses will be part of the record.

Ms. SHEA. Thank you.

Americans were shocked that our Western allies took the lead in ousting us from the Commission on May 3. Having observed the Commission firsthand, I believe the Europeans' action reflects the

abandonment of their historical commitment to human rights. Whereas in the past the Western European delegations were in the forefront of the Commission's work, highlighting injustices in South Africa, East Timor and Bosnia, they now resort to euphemisms and half-truths.

The U.S. stands virtually alone in trying to focus world attention on actual and specific violations of human rights. Repeatedly at the 57th Commission the U.S. had to break with the European Union in order to vote its conscience on issues like slavery in Sudan, religious persecution in China and political repression in Cuba. The U.S. stood alone, often, in opposing blatantly political condemnations of Israel.

In my view, the loss of our seat on the Commission is meant to punish the U.S. for marching out of step. I believe the United States is deeply resented not only by the despotic regimes that pack the Commission but also by our European Union allies who dislike being forced to vote in public on measures censuring countries with which they hope to conclude trade deals. A West European Ambassador confidently told me in a few years there will be no more "finger-pointing" on the Human Rights Commission.

If the U.S. is to win back its seat in 2002 and prove him wrong, we will need to develop a strategy for reversing four trends that are hastening the Commission's decline into irrelevancy.

First, a new dominant culture requires that the Commission pass its resolution by consensus. Europeans favor this, as do states with poor records on human rights. Now three-quarters of the resolutions of the Commission are adopted by consensus. Consensus politics means that Sudan, say, helps to get to draft the resolution censuring itself. The Khartoum government, which Secretary of State Colin Powell recently called "the biggest single abuser of human rights on earth," thus was able to have removed from the latest resolution all mention of slavery even though the Commission's rapporteurs have documented the involvement of Khartoum's militias in the practice of slavery in seven consecutive annual reports. The European Union-sponsored resolution on Sudan was so weak that the U.S. was forced to abstain and make a statement of protest.

Second, the Commission, like many other U.N. forums, frowns on the practice of naming violators of human rights in open debate. However, during the recent 6-week session, the Commission adopted five resolutions censuring Israel, over U.S. objections. Israel was also the sole focus of a special session of the Commission last October at which a resolution was adopted condemning Israel for "crimes against humanity."

At the Commission, Israel is the only country that has an entire agenda item dealing solely and exclusively with it. Israel itself is prevented from being a member of the Commission—as well as other key U.N. bodies such as the Security Council and ECOSOC. Until last year, it had been excluded from the five regional U.N. groupings from which member of these bodies are selected. In 2000, U.S. efforts led to the admission of Israel into the Western group but under the condition it not apply for seats on the U.N. Human Rights Commission and other bodies.

The U.S. does not conform to this practice of naming no one except Israel. Thus, during the discussion of human rights defenders, the American intervention mentioned case after case of particular defense lawyers, journalists, clergy and other human rights activists in specified countries who have been imprisoned or murdered for their work. In contrast, speaking for EU, the Swedish Ambassador addressed the issue in platitudes and generalities.

The same pattern held whether the subject under discussion was persecuted religious leaders, vulnerable groups or those imprisoned for exercising the international right to free expression. At most, EU delegates were willing to cite countries for failing to cooperate with a Commission rapporteur, though they never debated the actual findings of the rapporteur in plenary.

The EU states it prefers cooperation to public pressure, and their examples abound on China and Sudan where it points to how cooperation is working despite almost universal findings by the United States State Department, the NGO community and the media that human rights in these countries are deteriorating. Clearly cooperation is a fiction invented to protect Europe's honor and to shield the reputations of abusive governments.

Third, there is Europe's China problem. China is the country that stands to gain the most from the U.S. ouster, so much so that some observers believe eagerness to curry favor with this important trading partner was the European's main motivation for running three candidates. Next year, with the U.S. out of the way, there will be no embarrassing resolution of censure that China will have to work hard to defeat. At the 57th session, the U.S. was the lone sponsor of the draft resolution against China, having failed to garner the European support it had during most of the 1990's.

China's open bullying and use of trade levers are well known at the Commission. After Denmark introduced the resolution citing Chinese human rights abuses in 1997, China threatened to make the issue, quote, a rock that smashes on the Danish government's head. End of quote. That was the last time the U.S. was able to secure co-sponsorship of the measure.

Fourth, resolutions dealing with economic rights for groups and even governments are proliferating. These rights as envisioned in the resolution are unachievable, depending as they would for their implementation on the wholesale transfers of wealth and technology from developed to underdeveloped nations.

A "right to development" resolution introduced by China, Mexico and the Non-Aligned Movement names, among other obstacles to development, "the existing intellectual property rights regime." incredibly, only Japan joined the United States in opposing this resolution. All of Western Europe voted for it except for the U.K., which abstained. In the past, the most enthusiastic champion of economic rights was the Soviet bloc. I believe that, then as now, the main purpose served by debating such unenforceable rights is to distract attention from governments' refusal to force the civil and political rights of the individual.

To reverse these four deplorable trends will be a challenge and an insurmountable one unless the Europeans reverse course. Eleanor Roosevelt and the other drafters of the Universal Declaration of Human Rights at the first Commission on Human Rights in

1947 believed that moral persuasion could be a potent force for change. Since then, Western Europe has made important contributions in advocating human rights abroad and has been an essential American partner at the Commission in giving a voice to the voiceless. If the European nations do not return to this tradition, in my view, the Commission will have outlived its usefulness whether or not the U.S. recapture its seat.

Thank you very much.

Mr. SMITH. Thank you, Ms. Shea, for your testimony.

[The prepared statement of Ms. Shea follows:]

PREPARED STATEMENT OF NINA SHEA, DIRECTOR, CENTER FOR RELIGIOUS FREEDOM, FREEDOM HOUSE, AND FORMER PUBLIC MEMBER OF THE U.S. DELEGATION TO THE U.N. HUMAN RIGHTS COMMISSION

Thank you Madam Chairman and Committee Members for this opportunity to testify about the recently concluded session of the United Nations Human Rights Commission, which I attended as a public member of the U.S. delegation. I have been an international human rights lawyer for 22 years and over that period have attended many sessions of the UN Human Rights Commission, including as a public member of the U.S. delegation in 1993. I appear today in my private capacity as the director of the Center for Religious Freedom of Freedom House, and the views expressed in the testimony are my own. They do not reflect the views of the U.S. Delegation, the Department of State, or the U.S. Government.

For over 50 years, the United States had been continuously re-elected to one of the seats at the Commission either by acclamation when the Western Countries and Others Group (WEOG) to which the United States belongs presented a single slate of candidates to the Commission or by voted election when the number of candidates exceeded the number of vacant seats in the regional group. When France, Austria, and Sweden all insisted on competing for the three open Western seats this year, they forced the Economic and Social Council, which oversees the Commission, to resolve the matter by secret ballot.

Americans were shocked that our West European allies took the lead in ousting us from the Commission on May 3. Having observed the Commission first hand, I was less surprised. Contrary to reports in the media, the ouster was not a reaction to American "unilateralism" on issues such as missile defense and global warming. Rather, I believe the Europeans' action reflects the abandonment of their historical commitment to human rights.

Whereas in the past, the Western European delegations were in the forefront of the Commission's work, highlighting injustices in South Africa, East Timor, and Bosnia, they now resort to euphemisms and half-truths. The United States stands virtually alone in striving to focus world attention on actual and specific violations of human rights. Repeatedly at the 57th Commission, the United States had to break with the European Union in order to vote its conscience on issues like slavery in Sudan, religious persecution in China, and political repression in Cuba. The United States often stands alone, too, in opposing blatantly political condemnations of Israel. In my view, the loss of our seat on the Commission is meant to punish the United States for marching out of step.

I believe, the United States is deeply resented, not only by the despotic regimes that pack the Commission—such as Sudan, Libya, Algeria, Cuba, Syria, and Vietnam—but also by our European Union allies, who dislike being forced to vote in public on measures censuring countries with which they hope to conclude trade deals. Newspaper editorials from Copenhagen to Madrid have expressed satisfaction with the American ouster, sneering that go-it-alone U.S. behavior in international forums represents "boorish" isolationism. A West European ambassador confidently told me that in a few years there will be no more "finger-pointing" on the Human Rights Commission.

If the United States is to win back its seat in 2002 and prove him wrong, it will need to develop a strategy for reversing four trends that are hastening the Commission's decline into irrelevancy.

- First, a new dominant culture requires that the Commission pass its resolutions by consensus. The Europeans favor this, as do states with poor records on human rights. Consensus politics means that Sudan, say, gets to help draft the resolution censuring itself. The Khartoum government, which Secretary of State Colin Powell recently called "the biggest single abuser of

human rights on Earth,” thus was able to have removed from the latest resolution all mention of slavery even though the Commission’s rapporteurs have documented the involvement of Khartoum’s militias in the practice of slavery in seven consecutive annual reports. The European Union-sponsored resolution on Sudan was so weak that the United States was forced to abstain and make a statement of protest.

- Second, the Commission like many other U.N. forums frowns on the practice of naming violators of human rights in open debate. However, during the recent six-week session, the Commission adopted five resolutions censuring Israel, over U.S. objections. Israel was also the sole focus of a special session of the Commission last October at which a resolution was adopted condemning Israel for “crimes against humanity.” At the Commission, Israel is the only country that has an entire agenda item dealing solely and exclusively with it. Israel, itself, is prevented from being a member of the Commission—and other key UN bodies such as the Security Council and ECOSOC—because it has been excluded from the five regional UN groupings from which members are selected. (Condemnation of Israel is also expected to be a big theme of the upcoming UN World Conference Against Racism in Durban whose preparatory draft documents have resurrected the discredited “Zionism is racism” equation—using the awkwardly phrased slogan, “Racism is Zionist practices against Semitism.”)

The United States does not conform to this. Thus, during the discussion of “human rights defenders,” the American intervention mentioned case after case of particular defense lawyers, journalists, clergy, and other human rights activists in specified countries who have been imprisoned or murdered for their work. In contrast, speaking for the EU, the Swedish ambassador addressed the issue in platitudes and generalities. The same pattern held whether the subject under discussion was persecuted religious believers, vulnerable groups, or those imprisoned for exercising the international right to free expression. At most, EU delegates were willing to cite countries for failing to cooperate with a Commission rapporteur, though they never debated the actual findings of the rapporteur in plenary.

The European Union states it prefers “cooperation” to public pressure. French diplomats point to China, explaining that civilized dialogue coaxed China to ratify the International Covenant on Economic, Social and Cultural Rights. In making this argument, the French ignore China’s recent labor camp detentions of Catholic bishops and thousands of Falun Gong practitioners, its destruction of a thousand churches and temples just before Christmas, and its revival of the practice of confining dissidents in psychiatric institutions. A German diplomat recently named special rapporteur for Sudan similarly cited the Commission’s success at gaining that country’s cooperation in establishing, with international funding, a committee to eradicate slavery. But of the tens of thousands of people thought to be enslaved in Sudan, this committee has rescued only 353, in a single highly publicized event shortly after its establishment two years ago. Slaves, meanwhile, continue to be captured in government-sponsored raids faster than they are being released by the committee. Clearly, cooperation is a fiction invented to protect Europe’s honor and to shield the reputations of abusive governments.

- Third, there is Europe’s China problem. China is the country that stands to gain most from the U.S. ouster so much so that some observers believe eagerness to curry favor with this important trading partner was the Europeans’ main motivation for running three candidates. Next year, with the United States out of the way, there will be no embarrassing resolution of censure that China will have to work hard to defeat. At the 57th session, the United States was the lone sponsor of the draft resolution against China, having failed to garner the European support it had through most of the 1990s.

China’s open bullying and use of trade levers are well known at the Commission. After Denmark introduced the resolution citing Chinese human rights abuses in 1997, China threatened to make the issue “a rock that smashes on the Danish government’s head. Denmark, the bird that pokes out its head, will suffer the most.” That was the last time the United States was able to secure co-sponsorship of the measure. Beijing tolerates no criticism of its human rights abuses on U.N. premises. After Freedom House arranged a press conference with Chinese democracy activists during last year’s session, China, with the support of Sudan and Cuba, brought proceedings to bar it from participating at future sessions.

- Fourth, resolutions dealing with economic rights for groups and even governments are proliferating. These “rights” as envisioned in the resolution are unachievable, depending as they would for their implementation on wholesale transfers of wealth and technology from developed to undeveloped nations. At the 2001 session, a dozen resolutions passed, some at European initiative, on the rights to food, water, housing, HIV/AIDS drugs, education, development, and a raft of other economic issues.

A “right to development” resolution, introduced by China, Mexico and the Non-Aligned Movement (alive and well a decade after the Cold War), contains many references to these transfers of wealth and technology. Incredibly, only Japan joined the United States in opposing this resolution. All of Western Europe voted for it except the United Kingdom, which abstained. In the past, the most enthusiastic champion of economic rights was the Soviet bloc. I believe that, then as now, the main purpose served by debating such unenforceable “rights” is to distract attention from governments’ refusal to enforce the civil and political rights of the individual.

To reverse these four deplorable trends will be a challenge, and an insurmountable one unless the Europeans reverse course. Eleanor Roosevelt and the other drafters of the Universal Declaration of Human Rights at the first Commission on Human Rights in 1947 believed that moral suasion could be a potent force for change. Since then, Western Europe has made important contributions in advocating human rights abroad and has been an essential American partner at the Commission in giving a voice to the voiceless. If the European nations do not return to this tradition, in my view, the Commission will have outlived its usefulness whether or not the United States recaptures a seat. I am not suggesting that we not try to reclaim a seat at the UN Human Rights Commission but that the problems at the Commission go deeper than our being voted off the panel.

Mr. SMITH. Mr. Palmer.

**STATEMENT OF THE HONORABLE MARK PALMER, VICE  
CHAIRMAN OF THE BOARD OF TRUSTEES, FREEDOM HOUSE**

Mr. PALMER. You asked what is the procedural way out, and I will dispose with my written testimony altogether and try to respond to that question.

I was delighted that the chairperson referred to the Community of Democracies because Freedom House, and I am appearing as Vice Chairman of the Board of Freedom House, 4 years ago saw that we could not win on the current terrain. There is no way, playing by the rules we are operating under, that we are going to ever succeed.

What Freedom House recognized and I think you recognized a long time ago is that, of course, the powers of the democracies are vastly expanded today. We are now a majority—a majority in the world, a majority in the U.N. but we do not operate together. Why? It is very obvious. We don’t even meet together. We have no organization. We have no structure, no caucus. We have no secretariat. We have no existence as a group of nations.

Recognizing that, 4 years ago Freedom House drafted a document proposing the creation of the Community of Democracies, and we lobbied the Administration. And I want to stress that a number of new members of the new Administration were among those who lobbied as well as many Democrats who are members of the Board of Freedom House. And, as you know, we were successful in both persuading the Administration and then bringing in many new democracies like Poland with excitement behind this, and Kim Dae-jung from South Korea.

The Democrats of the world saw that this was our opportunity, that we needed to work together to promote democracy, to get rid of the remaining 48 dictators in the world. It is a gross misunder-

standing of what is happening in the world to say the cold war is over. The fact is, millions and billions of people still live under dictatorship.

Within the U.N. structure there are regional caucuses, but there are also functional caucuses. And what was agreed last June in Warsaw by the 107 governments that came there at the level of foreign minister, with the single exception of the French Foreign Minister Vedrine who I think is particularly responsible for our not getting reelected to the U.N. Human Rights Commission, with that one exception all of the governments there agreed that we should establish democracy caucuses not only within the U.N., but within all other international bodies as well.

Under the chairmanship of Poland, the really vigorous young democracy, we actually had a meeting of the caucus last fall; and it is an unfortunate fact with the nature of American politics that with the new Administration coming into office there are reviews of many things and this is one of the issues which has been unreviewed.

I wanted to call to the Committee's attention the article by William Safire on May 31 last week in the New York Times in which he goes into this in some detail, and the conservative he is he supports very vigorously the establishment of freedom caucuses within the U.N. and within all other bodies.

If we had a caucus and if the purpose of the caucus was exclusively to promote democracy in the world, then we will win because we will have our team together, our team doing strategy and doing tactics. In the absence of that, I don't see any way except that we will go further downhill within U.N. bodies.

We must recognize the power realities. We must have a power group. We must have a new architecture. That is what Dean Acheson and Truman and Marshall and others recognized at the end of the Second World War. We needed a new architecture. Our new architecture for the 21st century has to be for Africa's democracies, for the democracies of Latin America, the democracies of Asia, of the new Europe and the old Europe and the United States to pull together and to finish the job.

Thank you.

Mr. SMITH. Thank you very much for that statement.

Your full time statement will be made a part of the record, and I look forward to reading it. I have not read yours. Thank you.

[The prepared statement of Mr. Palmer follows:]

PREPARED STATEMENT OF THE HONORABLE MARK PALMER, VICE CHAIRMAN OF THE BOARD OF TRUSTEES, FREEDOM HOUSE

*Introduction.* Good afternoon, and thank you for the invitation to testify before this esteemed subcommittee. My name is Mark Palmer. I am a vice chairman of the board of trustees of Freedom House and a former U.S. ambassador to Hungary. In 2000, I was a member of Freedom House's delegation to the United Nations (UN) Human Rights Commission meetings in Geneva. In 1993, I headed Freedom House's delegation to the UN World Conference on Human Rights in Vienna.

I would like to share Freedom House's perspective on the role of nongovernmental organizations (NGOs) in the UN Economic and Social Council and its subsidiary bodies, which include the Human Rights Commission. More specifically, I would like to address the efforts of some nations to silence NGOs that offer a clear voice at the UN on vital human rights issues. It should come as no surprise that these nations—China, Cuba, and Sudan foremost among them—have some of the worst human rights records of any UN-member states.

*Freedom House and the UN.* Freedom House, as you might know, is a nonprofit organization that has worked for decades to advance the cause of democracy, human rights, and religious freedom around the globe. Freedom House was, in fact, founded sixty years ago this year. One of our leading early figures, Eleanor Roosevelt, was instrumental in the drafting of the Universal Declaration of Human Rights. Freedom House itself was a strong advocate for the establishment of the United Nations. And we have remained a proponent of American engagement in the world, especially in the advancement of democratic values, human rights, and the rule of law.

At the same time, Freedom House has been a critic of the UN when, in our view, it has strayed from its core mission to preserve peace and security, to defend human rights and freedom, to foster relations between nations based on respect for equal rights and self determination, and to rally international cooperation on economic, social, cultural, and humanitarian problems. Freedom House continues to favor a vigorous American role in the United Nations. But we believe that recent events, including the failure of the United States to win reelection to the Human Rights Commission, call for a sober assessment of the UN's deficiencies and some hard thinking on strategies to reform this important institution.

*ECOSOC and NGOs.* The Economic and Social Council, also known as ECOSOC, is the principal UN body for the promotion of human rights and freedom. ECOSOC tries to fulfill this mission through the Human Rights Commission, one of its 24 subsidiary bodies. Unfortunately, the Commission's record through the years has been seriously deficient. For example, even in the years since the 1989 Tiananmen Square crackdown, the Human Rights Commission has failed to pass a single resolution censuring China for its persecution of democracy advocates and religious faithful. And in the last three years, resolutions condemning Cuba's human rights practices have passed but without achieving a simple majority. In the last two years alone, however, the Commission has succeeded in passing no fewer than nine resolutions against Israel, all of them by overwhelming majorities.

What is responsible for the Commission's failure to carry out its core mission? Clearly, the most important reason for the Commission's human rights failures is the determined and thoroughly organized effort of what some have come to call the tyrants' bloc, a coalition of human rights abusers that includes some of the most despotic countries in the world. In case after case, the tyrants' bloc has proven better at achieving its objectives than have the democracies. The recent elections to the Human Rights Commission are a perfect case in point. Another example is the ongoing campaign by countries like China, Cuba, and Sudan to silence NGOs that dare to shine the spotlight on the perpetrators of abuse. My organization, Freedom House, is among the principal targets of an aggressive and carefully orchestrated anti-NGO campaign.

Under the UN Charter, ECOSOC may consult with NGOs on humanitarian, economic, social, and related issues. But to gain formal credentials with ECOSOC, NGOs must apply for official consultative status with ECOSOC's Committee on Non-Governmental Organizations. Recently, however, a group of human rights abusers has mobilized and formed coalitions to thwart applications for consultative status from NGOs that have a proven record of defending human rights and democracy. The tyrants' bloc has also started a campaign to strip the credentials from NGOs that have offended its members.

I can attest to these problems because of the experience Freedom House had when it first applied for consultative status in 1995. When the Committee took up our case, Cuba immediately launched a major campaign—and, I might add, a nearly successful campaign—aimed at a vote to reject our application. The NGO Committee, in fact, sent a recommendation to the full ECOSOC that Freedom House's application should be turned down.

In the end, the full ECOSOC Committee reversed the NGO Committee's decision. The vote was 31 countries in favor of Freedom House, 11 against us, and ten abstentions. Of the 11 countries that voted against us, seven—China, Cuba, Egypt, Indonesia, Libya, Nigeria, and Sudan—had received a designation of "not free" in Freedom House's annual freedom index and survey of political rights and civil liberties. The four others who opposed us were rated "partly free."

The correlation between the votes against Freedom House and our survey ratings did not go unnoticed. A *Time* magazine article noted at the time that the action of some NGO Committee members against Freedom House "highlighted a tendency among a coterie of nations often accused of political abuses . . . to continually fight UN efforts on behalf of human rights." Sadly, the trend continues and seems to be gaining strength.

*The campaign against Freedom House.* Today, some prominent American NGOs, including the Family Research Council, are unable to gain consultative status at the UN because of the machinations of the tyrants' bloc. In May of this year, Hadassah,



the Women's Zionist Organization in America, finally gained consultative status after a three-year struggle against Syria, Iran, and other objectors. Other organizations, including Freedom House, International PEN, the Robert F. Kennedy Memorial Center for Human Rights, and the Simon Wiesenthal Center, that already enjoy consultative status are threatened with the potential loss or suspension of their credentials. In several other cases, including that of the Swiss group Christian Solidarity International, the tyrants' bloc has already succeeded in stripping valid human rights organizations of their affiliation.

The campaign against Freedom House is instructive. Some of the accusations brought against us amount to petty violations of procedural rules. Thus, China accused us of receiving unauthorized Chinese interpreting services at the 2000 Human Rights Commission meeting in Geneva. Other accusations are ideological in nature. Cuba objected to our inviting a distinguished legal scholar and human rights expert who is critical of Cuba's legal system to participate in our delegation to the Commission meeting. And some complaints are purely political. Thus, Sudan was irritated when we spoke out against human rights abuses in Sudan when the country was in line to take a rotating seat on the Security Council.

The most recent complaints against us also come from Cuba and China. Cuba has accused Freedom House of consorting with terrorists and being an instrument of the CIA. Both charges are, of course, absurd. And China has expanded its list of objections because Freedom House has focused on the persecution of the Falun Gong, Catholics, Evangelical Christians, and Buddhists, and because we list Taiwan among the 192 countries we report on in our annual *Freedom in the World* survey.

To defend its place at the UN, Freedom House has used considerable staff time to answer the broad charges and to respond to an endless array of follow-up questions in person and in writing.

*The real motivation.* Although UN Secretary General Kofi Annan has expressed strong support for the NGO community and has acknowledged the many contributions of NGOs at the UN, the growing attacks against NGOs by the tyrants' bloc jeopardize the ability of the UN to fulfill its mission to safeguard human rights and advance democratic freedoms.

Moreover, the exclusion of the United States from membership on the Human Rights Commission and the International Narcotics Control Board will inevitably raise doubts about the United Nations' objectivity. These votes make clear the degree of politicization of the UN and strongly suggest the existence of de facto blocs of nations that support anti-democratic views or seek to marginalize the United States in the international arena—or both.

*A way out.* The events and machinations I have described ultimately do far less to damage the interests of the United States than to weaken the credibility of the United Nations. And they remind us, once again, of the UN's failure to serve as an effective instrument for the cause of freedom. How, then, should the United States proceed?

Skeptics will make a case for the United States to pull further away from the United Nations by withholding our dues or leaving the UN altogether. Others will call on the United States to become more conciliatory and to be a better team player. I would propose another response. Specifically, I would urge the creation of a coalition of democracies at the United Nations that can effectively confront the tyrants. Such a coalition could transform the culture in the Human Rights Commission that leads otherwise-responsible democracies to respond weakly in the face of intimidation and bullying.

Take, for example, the current composition of the Human Rights Commission. Of the Commission's 53 member countries, Freedom House ranks 23 countries "free", 15 "partly free", and 15 "not free" in its 2001 freedom index. Likewise, of the NGO Committee's current members, Freedom House considers 7 "free", 5 "partly free", and 7 "not free." These figures provide clear evidence that democratic nations, along with countries in transition to democracy, have the strength in numbers to make the Human Rights Commission and the NGO Committee fairer and more effective bodies.

This idea becomes even more compelling when one considers the number of Human Rights Commission and NGO Committee members that signed the Warsaw Declaration at the "Towards a Community of Democracies" ministerial conference last summer. Thirty-four Human Rights Commission members signed the declaration. Of these, Freedom House ranks 22 "free", 10 "partly free", and 2 "not free." Likewise, 12 of the current NGO Committee members signed the declaration, and of these Freedom House ranks 6 as "free", 4 "partly free", and 2 "not free." France is the only "free" country on both UN bodies that refused to sign the Warsaw Declaration.

Countries that signed the Warsaw Declaration expressed “common adherence to the purposes and principles set forth in the Charter of the United Nations and the Universal Declaration of Human Rights.” They also affirmed their “determination to work together to promote and strengthen democracy,” including by creating coalitions and caucuses of democratic nations in international bodies like the United Nations. If the will and commitment to build a democracy caucus at the UN truly existed, the United States and its democratic allies could reclaim leadership at the UN and refocus the body on the effective pursuit of its core missions. Without such leadership and international cooperation by the democracies, the United Nations could deteriorate further into an ineffectual structure that hinders, rather than helps, the expansion of democracy, human rights, economic freedom, and the rule of law around the globe.

Thank you.

Mr. SMITH. Mr. Ackerly.

**STATEMENT OF JOHN ACKERLY, PRESIDENT, INTERNATIONAL CAMPAIGN FOR TIBET**

Mr. ACKERLY. Thank you Mr. Chairman.

I want to start by saying that the U.N. Human Rights Commission has been a vital institution for the people of Tibet. Indeed, the Commission is the only institution within the U.N. system where Tibetans have been able to consistently make their case for human rights improvements. The United States has been a very important ally to the Tibetans at the Commission. Their absence this year will be sorely missed, and we sincerely hope it will be just for 1 year.

We concur with I think many voices here today that the U.S. should remain engaged fully with the Commission and needs to revamp its strategy more toward being more inclusive and more multilateral. I won't go into detail with how the U.S. could work more multilaterally, but I did notice in Jeane Kirkpatrick's written testimony that very eloquent statement about how the U.S. could be more multilateral, much more eloquent than I would be.

Also, we are very pleased that Paula Dobriansky, Undersecretary of State for Global Affairs, will head up the State Department's review for the U.S. role at the Commission. Paula Dobriansky is a top-notch strategist, and I think her recommendations should have some good direction for how to move forward here. As you also know, she is the Special Coordinator for Tibet now at the State Department.

As Congressman Gilman noted, one example I want to point out of how the United States was effective for Tibet this year was insisting that there was a vote on the accreditation of my organization, International Campaign for Tibet. We applied to go to the racism conference in South Africa, and China objected. If it hadn't have been for the U.S. demanding a vote, we would have been excluded. And it is interesting that we won that vote, because we frankly expected that the vote may come out as the vote on the China resolution did.

This is something China campaigned on intensively. The U.S. campaigned intensively, too. And of the 112 countries that voted on our accreditation, 46 voted in favor, 37 against and 29 abstained.

But China did succeed in keeping some of its critics out of the conference. Human Rights in China, a very reputable group in New York, did not win the vote. We have invited Xiao Qiang, the Execu-

tive Director, to join our delegation; and it will be a privilege to have him join us in South Africa.

I think maybe one of the most specific recommendations we would have is something that you, Chairman Smith, just mentioned. It is that the U.S. should support minimal standards for membership in the Commission. Countries who wish to be part of the Commission should issue a standing invitation for the Commission investigators, including special rapporteurs and working groups, to visit their country. This would say, in essence, if you want a seat on the Commission you have to believe in the principle that the Commission was originally based on and the mechanisms of the Commission to operate in your country. More than 30 countries have now agreed to these standards, and the United States should, too.

Finally, we encourage the Bush Administration to use the upcoming submit to the European Union in Stockholm later this month to strategize about how to strengthen the Commission and also use it as an opportunity to discuss a more coordinated strategy on China. We know this would be difficult, but it is important to use the opportunity in Stockholm to do this this year.

Specifically on Tibet, we urge the U.S. and its allies to work on behalf of a visit to Tibet by the U.N. special rapporteur on torture and ill treatment. Moreover, the Tibetan Policy Act, which was just introduced last month in the House and Senate, has some important strategic recommendations for Tibet in the United Nations. I will not go through them right now, but these would be very effective for Tibet. For example, direct the U.S. and U.N. bodies to prevent leaders of peace such as the Dalai Lama from being excluded from different events.

With that, I want to thank you, Mr. Chairman and Ranking Member.

I also just want to say, Ms. McKinney, I was glad to hear you push the former panel about the U.S. participation in South Africa. I think it is important that we be there and that we have a high-ranking delegation. So I hope you keep that up and that we are there with most of the rest of the world.

Thank you very much.

Mr. SMITH. Mr. Ackerly, thank you very much for your testimony.

[The prepared statement of Mr. Ackerly follows:]

PREPARED STATEMENT OF JOHN ACKERLY, PRESIDENT, INTERNATIONAL CAMPAIGN  
FOR TIBET

Madam Chairwoman, thank you for the opportunity to address the Committee on this very important consideration for U.S. diplomacy and human rights. My name is John Ackerly. I am the President of the International Campaign for Tibet, the largest Tibet advocacy organization in the world with offices in the U.S. and Europe and more than 80,000 members.

The International Campaign for Tibet participates annually at the UN Human Rights Commission in NGO representations surrounding consideration of the China resolution and thematic human rights discussions, such as the rights of children, elimination of torture and so on. We also work throughout the year with The Office of Tibet in Geneva, a representative office of the Tibetan exile government.

The UN Human Rights Commission has been a vital institution for the people of Tibet and Tibet advocates to raise their concerns in the international arena. Indeed, the Commission is the only institution within the UN system where Tibetans have been able to make their case for human rights improvements. The United States

has been an important ally to the Tibetans at the Commission and US sponsorship—or co-sponsorship—of resolutions on China has helped to focus the attention of the international community on the plight of the Tibetan people. More importantly, the discussion of the human rights situation in Tibet at the Commission exposes China's worst behaviors in a forum where they seek to expand their clout. China must both devote considerable manpower and make ancillary deals requiring a significant expenditure of diplomatic and economic resources to counter the resolution each year.

To be sure, the Human Rights Commission has serious flaws and has become an increasingly politicized arena, which may be undermining its effectiveness. Nonetheless, we would oppose a U.S. retreat from the Commission and, to the contrary, strongly believe that the United States should remain fully engaged and work to reverse this trend. In doing so, it will reinvigorate the work of the Commission, help restore the Commission's credibility, and help return the United States to a position of leadership at the Commission.

The United States should utilize this year off the Commission, not as a respite, but as an opportunity to actively reconsider its objectives and options at the Commission—as this Committee is doing. We firmly believe that the solution to frustrations at the Commission is for the US to remain engaged and to consider revamping its strategy toward a more inclusive, transparent multi-lateral approach. The Human Rights Commission is too important—as it draws China into the discussion—not to utilize well. It is also one of very few multilateral mechanisms available. While the Commission has failed to effectively address many issues, including Tibet, it has also made extremely important contributions towards others.

We were especially pleased to learn that Paula Dobriansky, Undersecretary for Global Affairs, will head the State Department's review of the U.S. role at the Commission. Paula Dobriansky is a top-notch strategist, and we look forward to her recommendations on the Commission. As you know, Undersecretary Dobriansky has also been named as the Special Tibet Coordinator at State. I should take this occasion to express our gratitude to this Committee, which has been a critical ally in pushing for a top appointment for the Tibet Coordinator.

For the Tibetans, it is ominous to see China and her allies vigorously seeking seats on the Commission and on ECOSOC bodies while nations with quite good human rights records take a back seat. Today, the Human Rights Commission members include China, Cuba, Sudan and many other states that flagrantly abuse human rights. This suggests strongly that rather than retreating from the Commission after losing its seat, the United States must commit greater resources to thwarting the undermining of the Commission.

I want to highlight one recent example of how the United States helped my NGO win a vote—despite an intensive lobbying campaign by China. The International Campaign for Tibet had applied for accreditation to the UN World Conference on Racism to be held in Durban, South Africa, in August and September of this year. China objected to ICT's application because of our criticism of their regime, but the United States demanded that the application be held up to a vote. We frankly feared that the vote would reflect the China resolution vote pattern. It did not. Of the 112 countries that voted on our accreditation, 46 voted in favor, 37 against and 29 abstained. Without US leadership, a vote would not have been taken, and we would have been excluded.

It is interesting to consider why the United States can prevail on this vote—when ICT is so reviled by the Chinese authorities—and not on a China resolution based on a well-documented pattern of abuse. I would suggest that there is sufficient will among Commission members to do the right thing—if they do not perceive that they may be pawns in a battle of wills between the United States and China. We in the NGO community argued strongly this year for the necessity of cosponsors on the China resolution. Again, the United States, we feel, must work better multilaterally at the Commission.

China did succeed in keeping some of its critics out of the conference. China was able to portray one NGO that was previously denied ECOSOC accreditation, Human Rights in China, as unacceptable. Here, let me stress the fundamental need for good NGO representation at human rights conferences. With every respect to our governmental colleagues, it is rare for official representation to have commensurate hands-on experience with abuse and abusers that some NGOs have. That is why we take it as a great privilege to have Xiao Qiang, Human Rights in China's Executive Director, accept our invitation to be a member of the International Campaign for Tibet delegation to the racism conference—not only to speak out for his Chinese brothers and sisters but also to affirm the right of critics of China to attend UN conferences.

U.S. support for Tibet at the Commission has meant that China's abysmal record there can continue to be scrutinized in the international arena. Even though the

resolutions on China have not won passage, it is statement of principle that they are sponsored, *and continue to be sponsored*, as long as human rights conditions in China and Tibet merit international opprobrium. In spite of areas of progress in China, government-sponsored campaigns to restrict or deny fundamental freedoms to the Chinese and Tibetan peoples are still the means of choice to assure governmental control or Party supremacy.

The United States can proudly point to sponsorship or co-sponsorship of China resolutions. Similarly, the Congress has been immensely helpful by passing congressional resolutions in support of U.S. leadership at the Commission. For many, including the people of Tibet, the U.S. voice in Geneva—even in years like last year when the conclusion is foretold—still represents a “shining beacon on the hill” and what is best about America.

The United States, which assumes a leadership role in economic globalization, must not abdicate its principled stand on human rights. Have no doubt—a deliberate move away from the work of the Commission would signal such abandonment. Again, we would recommend working better multi-laterally to reduce barriers to human rights enforcement and to engage other countries in advancing a broad human rights agenda.

The United States has an important responsibility at the Commission to ensure that its mechanisms are not undermined. There are proposals being discussed in Geneva that would limit the power of the Commission’s work and, without a U.S. presence, countries like China and Sudan that want to avoid accountability would be in a stronger position. For example, a movement to end the country-by-country examination of human rights is gathering momentum. It is crucial, therefore, that the United States takes a position in favor of country-specific resolutions.

Another issue that the United States should support is minimal standards for membership in the Commission. Countries who wish to be part of the Commission should issue a standing invitation for the Commission’s investigators such as special rapporteurs and working groups to visit their country. This would say, in essence, that if you want a seat on the Commission, you have to believe in the principles of the Commission and allow the mechanisms of the Commission to operate in your country. More than 30 countries have now agreed to this pre-qualification and the United States should too.

A pivotal issue for the Congress and the administration is UN dues. We urge the Congress not to make payment of UN dues conditional on having a seat at the Commission and not to delay payment of back dues. Such a stand would engender more resentment, increase U.S. isolation, and play into the hands of those who voted against the United States. The United States need not demand the right to sit on the Commission, but should be elected as all other countries are. The United States should not have a problem winning a seat next year, particularly after beginning to implement recommendations I referred to earlier from the State Department’s review of the U.S. role at the Commission.

Finally, the International Campaign for Tibet would encourage the Bush Administration to use the upcoming summit with the European Union in Stockholm later this month to strategize about how to strengthen Commission mechanisms to meet its mandate of combating gross abuses of human rights. This is also an opportunity to discuss coordinating a China strategy next year, including a resolution, should human rights conditions in China and Tibet fail to improve. We have always believed that the United States and its allies at the Commission should assume a resolution, while retaining the option of stepping back should conditions on the ground improve. In the past, the decision has been made at the end of an annual review—obviously, too late for effective multilateral strategic coordination.

Specifically on Tibet, we would urge the United States and its allies to work on behalf of a visit to Tibet by the UN special rapporteur on torture and ill treatment. Moreover, the Tibetan Policy Act, introduced last month in the House as H.R.1779 and in the Senate as S.852, includes a Sense of the Congress that:

- (1) The U.S. should oppose any efforts to prevent consideration of the Tibet issue in any UN body;
- (2) The U.S. should oppose any efforts to prevent the participation of the Dalai Lama or his representatives in NGO fora hosted under UN auspices; and
- (3) The Secretary of State should instruct the U.S. Permanent Representative to the UN to support the appointment of a special rapporteur or working group for Tibet for the purposes of monitoring human violations in Tibet, and for making reports available to the High Commissioner for Refugees, High Commissioner for Human Rights, Human Rights Commission, General Assembly, and other UN bodies.

Madam Chairwoman and Ranking Member, I thank you for your cosponsorship of the Tibetan Policy Act, and I would ask those Members who have yet signed on as co-sponsors, to make that decision. Thank you again for the opportunity to testify before you today.

Mr. SMITH. Mr. Salinas.

**STATEMENT OF CARLOS M. SALINAS, AUTHOR AND CONSULTANT, AND FORMER ACTING DIRECTOR OF GOVERNMENT RELATIONS, AMNESTY INTERNATIONAL**

Mr. SALINAS. Mr. Chairman, Madam Ranking Member, it is my distinct pleasure to discuss with you the recent election of the members of the United Nations Commission on Human Rights.

The May 3rd vote resulting in the United States losing its seat took many by surprise, myself included. Certainly what hurt the most was not to lose the seat but to see Sudan and others like Sudan elected on.

I welcome your leadership in holding this hearing. I would like to assess the meaning of the vote and try to develop what I believe should be done. First, I believe there are three important facts.

First, this was not a vote in which the United States was competing against Sudan. I think that has been established in this hearing. The United States was competing with France, Sweden and Austria—in a sense, four countries competing over three slots.

Secondly, membership in the Economic and Social Council, ECOSOC, the body that elects the Commission, as well as the Commission itself, has, does and will likely include countries with troubling human rights records. I don't think this can be avoided when the majority of nations repress their citizenry in one way or another.

ECOSOC has always included both friends and foes of the United States government. How then did the United States lose the election? In other words, if the composition of the electing body has not significantly changed, what has changed?

I think the answer is that there has been a shift in the perception of the allies of the United States about the conduct of the United States government.

Third, no one is entitled to a seat on the Commission on Human Rights—not the United States, not Costa Rica, not Iceland, not Chile. I think it is better if we approach this issue as one of elections and not entitlements and ask why would the allies not have voted for the United States. And it is really startling to hear the State Department officials talk about the commitments they received. That is astounding, the renegeing of such commitments.

In part, the United States has had its own human rights record increasingly scrutinized. Today the Washington Post finished a four-part series about irregularities committed by homicide detectives here in Prince George's County, highlighting the extraction of false conversation, using such practices as sleep deprivation, refusing legal counsel and denying access to attorneys. Human rights groups have documented human rights violations here in the United States, from police brutality to such denials of due process, to abuse in correctional facilities, including the rape of detainees. That has not been lost on the world.

The treatment of asylum seekers and other migrants is also troubling, especially the denial of due process and the detention of asylum seekers with common criminals. Mr. Chairman, you were involved in a very important case, the case of the Chinese asylum seekers of the Golden Venture that were treated as common criminals.

When United States officials summarily deny asylum seekers from Cuba, as they do now, they are violating human rights law. That is also not lost on the world.

Where we enter the most controversial area and certainly where we will have strong differences of opinion here is with the issue of the death penalty. The United States government is out of step with its allies, with 700 executions since the renewal of executions since 1977.

Indeed, in this last session of the Commission, the U.S. was isolated again from its allies as it voted against the death penalty resolution that in part was fairly innocuous. It said, move toward a moratorium. It said, encourage states to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights. It said to respect the Vienna Convention on Consular Relations. It said, please do not execute the mentally retarded, don't execute those who were juveniles at the time of the crime, et cetera.

On the other side, the human rights implications of the United States foreign policy have been equally controversial, due mainly to support for despotic regimes. Going back to the 1970's, for instance, the report, CIA Activities in Chile, that Congress mandated states, "U.S. military assistance grew significantly during the years of the greatest human rights abuses." And this was not I saying that or a human rights group saying it or even the Institute for Policy Study saying that. It was the Central Intelligence Agency.

Declassified documents about El Salvador or Guatemala in the late 1970's and 1980's show a similar pattern of knowledge and terrible aforethought; and many, myself included, look and see more of the same happening today in Colombia.

Another area where the U.S. is out of step with its allies is the International Criminal Court.

I would like to first correct what I have said in my written testimony. In it, I said that the Administration, by threatening to withdraw signature from the ICC, shows a lack of understanding about human rights. Now, learning of the Chairman's opposition, having known the Chairman for about a decade, I know that that statement that I have made in the written testimony is incorrect. So I submit a correction.

I do disagree with the Chairman. The International Criminal Court is very important. And, again, the Administration's threat to find a way to remove the signature on the treaty does not endear the United States to the overwhelming majority in favor of the Court.

The opposition to the Mine Ban Treaty is another example of ceding human rights leadership, as is the record of dealing with human rights treaties such as the Convention on the Elimination of All Forms of Discrimination Against Women or the Convention on the Rights of Child and others.

Unfortunately, in the arena of human rights, the United States has adopted positions that have alienated friends and encouraged foes. This includes the steadfast opposition—and here I think I do part from some of the opinions expressed in the panel—to economic, social and cultural rights. They are indivisible from civil and political rights. They are an integral part of the Universal Declaration of Human Rights.

But, unfortunately, these challenges are not restricted to the human rights arena. With both the March withdrawal from the Kyoto Protocol and the continuing threat of withdrawal from the Antiballistic Missile Defense Treaty by the deployment of National Missile Defense, the Administration seems to believe it has unlimited political capital in a world that is less, not more, interconnected. A “go at it alone and oppose the allies approach” is as if the Administration had an overwhelming electoral mandate to push allies and provoke potential enemies by waving red flags in their faces.

I believe that the losing of the seat on the Commission is likely to be just one of several setbacks to come as long as this approach continues. The Commission votes should be viewed not only as concern about U.S. human rights but also about its overall foreign policy.

The arrears on the United Nations certainly decrease goodwill. Current congressional proposals to tie payment of the arrears to regaining the Commission seat will likely backfire. Congress should heed the letters sent by human rights groups, and the proposal should be allowed to quietly drift off.

Instead, the United States government must itself get back on course and readopt a multilateral approach to its foreign policy. I believe the steps include: tabling the National Missile Defense; supporting the Kyoto Protocol; paying all back dues to the United Nations; ratifying international human rights instruments, including CEDAW, including the International Covenant on Economic, Social and Cultural Rights; sign and ratify the Mines Ban Treaty as well as the International Criminal Court.

I believe the House-passed measure attacking the ICC should not be supported by the Senate. I believe the World Conference Against Racism should be fully supported by the Administration and Congress. And I believe you have an important role in holding hearings on human rights and foreign policy, as you have in evaluating lessons learned and applying them to current policy and encouraging the other Committees to hold hearings on human rights compliance at home, the different Committees that have jurisdiction on these issues.

Finally, I believe that the United States government should abolish the death penalty. It is a human rights issue, and it is one that has the United States government increasingly at odds with its allies.

With that, I thank you all very much; and, again, it is great to be with you.

Mr. SMITH. Thank you very much, Mr. Salinas, for your testimony.

[The prepared statement of Mr. Salinas follows:]



PREPARED STATEMENT OF CARLOS M. SALINAS, AUTHOR AND CONSULTANT, AND  
FORMER ACTING DIRECTOR OF GOVERNMENT RELATIONS, AMNESTY INTERNATIONAL

Madame Chair, Madame Ranking Member, Members of the Subcommittee, it is my distinct pleasure to be here before you and present you with some thoughts on the recent election of the members of the United Nations Commission on Human Rights.

The May 3rd vote by the United Nations Economic and Social Council, which resulted in the United States losing its seat, took many by surprise. This marks the first time that the United States will not be on the Commission since the Commission's inception in 1947. The United States government was a key part of that first Commission, formed first to draft the Universal Declaration of Human Rights, an effort that was led by the head of the United States delegation, First Lady and beloved Stateswoman Eleanor Roosevelt.

Different responses to the vote were issued, some of which were more helpful than others. A bill was introduced before this House threatening to withhold United Nations dues, which was then countered by a coalition of human rights organizations and others. A flood of opinion editorials and other commentary ensued, and many, like those written by the former Assistant Secretary for Democracy, Human Rights, and Labor, Harold Koh, urged restraint and reminding readers that if anything is to be learned it is that more, not less, engagement was needed. Others like Phyllis Bennis, a Fellow of the Institute for Policy Studies, reminded readers that this was an almost inevitable wake-up call. Indeed, she cited Secretary Powell remarking that this was "a vote looking for a venue."

To be sure, what probably hurt most in Washington was not only to lose a place in the Commission, but also to see that Sudan, a government well known for its atrocities, was elected on. This of course happens at a time when the plight of the Sudanese is achieving increasing visibility and high-level attention. This latter fact is perhaps the most unfortunate distracting factor in the current controversy.

So it is useful to hold this hearing and to assess the meaning of the vote, and from there, to develop an idea of what would constitute an appropriate response.

### THREE KEY FACTS

*The first fact is that this was not a vote in which the United States was competing against Sudan or Pakistan or even Sierra Leone. The United States was competing with France, Sweden, and Austria—four countries competing over three slots.* The vote is for a number of countries to occupy regionally-assigned slots. In other words, each member of ECOSOC votes for their choices, from a regional pool (in this case the four countries) for the regionally assigned slots (in this case, three). This vote is repeated for each of the regional slots.

Nor is it unprecedented that the United States compete with European nations for the limited number of regional slots. What is unprecedented is that this time, the United States lost the election.

While the 54-member parent body of the Commission which elects the Commission's members, the Economic and Social Council or ECOSOC, has some states with which the United States has a challenging relationship, such as China, Cuba, and Syria, ECOSOC has more than its share of nations sympathetic or closely allied to the United States, such as Bolivia, Canada, Costa Rica, Denmark, Egypt, Germany, Greece, Honduras, Indonesia, Italy, Japan, Mexico, Netherlands, Norway, Peru, Portugal, Republic of Korea, Saudi Arabia, South Africa, and the United Kingdom.

It is of course troubling that Sudan was voted in, as part of the African selection, which leads to the second fact.

*Membership in the Commission has in the past, currently includes, and in the future will likely include countries with troubling human rights records* like China, Cuba, Indonesia, the Russian Federation, Saudi Arabia, and Syria. How can this be avoided when the majority of nations repress their citizenry or contribute to the repression of other peoples, in one way or another? When the majority in a pool shares certain attributes, you can expect to get a certain representation of such qualities.

It is troubling that nations opposed to human rights scrutiny will support each other in thwarting transparency and impartiality. When you add this ingredient to the already complicated calculus of national interests, where economics and other strategic interests enter into play, very obvious human rights violators avoid well-deserved international censure. One need not go further than reviewing the sorry state of affairs, year in and year out, of the United States' attempt to pass a resolution condemning human rights violations committed by the Chinese government to see this in full force.

This year, the no-action motion introduced by the Chinese government counted with the vocal support of Algeria, Cuba, Indonesia, Libya, Pakistan, the Russian

Federation, and Syria, all countries known for serious human rights violations. Some, like Syria, argue that there is no human rights problem in China; others like Cuba argue that the resolution is simply a tool of United States hegemony; still others, like Russia, argue that resolutions are counterproductive and that dialogue is the way to go. Whatever the argument, the result is the same: another free ride for arguably one of the most repressive governments in the world. All of this happened of course without Sudan's help. In other words, the Commission has in the past and will continue to deliver results that are questionable at best.

So if the Commission and ECOSOC and of course the UN has always included repressive governments and the vote included a good number of sympathizers if not downright strategic partners and allies, how then did the United States lose the election? In other words, if the composition of the electing body has not significantly changed, then what has changed to yield such an embarrassing result? The answer is that there has been a shift in the perception of the allies.

The Chinas and Cubas and Libyas continue to oppose positions assumed by the United States—so that has not changed dramatically. Certainly, since the fall of the Berlin Wall, the United States has gained East European support where before there was opposition. What changed was the attitude of allies; indeed none of the three European nations agreed to bow out of the running, despite the request by United States officials. How did we arrive at this state of affairs? Before this is answered, we have to take into account *a third fact: no one is entitled to a seat on the Commission on Human Rights*. Not Chile. Not South Africa. Not Iceland. And not the United States. The issue needs to be approached as one of elections and not entitlements.

#### HUMAN RIGHTS IN THE UNITED STATES OF AMERICA

In terms of human rights itself, the United States has had its own record increasingly scrutinized. The *Washington Post* today finished a four-part series about irregularities and abuses committed by homicide detectives here in Prince George's County. Based on court records, interviews, and police records, *Washington Post* investigative reporter April Witt highlighted the extraction of false confessions, using such practices as sleep deprivation, refusing legal counsel, and denying access to attorneys. In another part of the metropolitan area, I have personally witnessed a policeman kick in the face of a young man already immobilized on the ground by other police officers. Yet these are not isolated incidents. Human rights groups like Amnesty International and Human Rights Watch have amply documented human rights violations here in the United States. From Cincinnati to New York, and in many other major urban centers like Los Angeles and Pittsburgh—there are serious problems with police misconduct, often with an exacerbating racial factor.

But it does not stop there—correctional facilities continue to produce case after case of ill treatment and sexual misconduct and/or attack. It would be hard to find a single Member of Congress that would condone such behavior. What is hard is for Members to accept is that these atrocious crimes that they vehemently oppose are called human rights abuses or violations. But this denial only leads to an exacerbation of the problem, instead of confronting and thus resolving the issue.

The treatment of asylum seekers and other migrants is also an area of concern, especially the denial of due process and the detention of asylum seekers with common criminals. When United States officials summarily deny entry to asylum seekers from Cuba, they are violating human rights law. For years, successive Administrations denied such basic rights to Haitian asylum seekers and the world was watching then too.

Another related area that has been getting more attention is that of the death of migrants along the United States—Mexico border. The policy has been to deliberately close off key areas of the border, leaving relatively open some of the most inhospitable areas on the entire planet. We recently read about more dehydration deaths along the border. While the public here may not be too concerned or, at worst, feel that this is a fair policy, our Mexican sisters and brothers do not approach this with such a cavalier attitude. During a trip to Tijuana a few years ago, I was shown the massive steel walls dipping into the pounding surf; the watchtowers and floodlights and barbed wire along the border; and cross after cross after cross in memory of those who died while attempting to cross into the United States. This situation is unsustainable and is bound to become more problematic.

Where one enters the most controversial area is where most of the European allies look at the United States and see a system of out of control barbarism and that is the death penalty. Now with more than 700 state-sanctioned killings, the United States is out of step with its allies, on a human rights issue. A recent release from Amnesty International in London summed this up starkly:

"The execution of mentally impaired prisoners like John Paul Penry is just the tip of a human rights scandal that deserves the growing international condemnation it is receiving and demands human rights leadership at the highest level. Prosecutorial misconduct, inadequate legal representation, discrimination, and the use of the death penalty against children and the mentally ill, remain aspects of this punishment. But while some of these practices can be remedied by legislation, this is a punishment that [can] never be cleaned of its cruelty and freed from its potential for irrevocable error. What is more, the death penalty can offer no constructive contribution to society's efforts to confront violent crime and those victimized by it. It can never be anything other than a calculated imitation of what it seeks to condemn, the deliberate taking of human life."

This last session of the Commission on Human Rights also delved into the death penalty and the United States was further isolated, as it voted against a resolution; along with Algeria, China, Indonesia, Libya, Pakistan, Saudi Arabia, and Syria; that, *inter alia*, called on states to enact a moratorium on executions and move towards abolition, not to execute those who were juvenile at the time of the crime nor to execute those mentally retarded, and to comply with the Vienna Convention on Consular Relations.

#### HUMAN RIGHTS AND UNITED STATES FOREIGN POLICY

The human rights implications of United States foreign policy has been equally controversial. In Latin America and the Caribbean, many in the region associate the United States with human rights violations, despite the important human rights positions assumed by the United States. This is due mainly to the United States support for terribly despotic regimes such as the military dictatorships of the Southern Cone or the regimes in Central America. Declassified documents from the Central Intelligence Agency and other intelligence and defense agencies confirm that support was given to the Pinochet dictatorship in Chile in the early 1970s despite the fact that the United States policymakers knew that atrocities were taking place. The report CIA Activities in Chile starkly states, "US military assistance grew significantly during the years of greatest human rights abuses."

Declassified documents about El Salvador or Guatemala in the late 1970s and 1980s show a similar pattern of knowledge and terrible forethought. While some might be tempted to conclude that this is all water under the bridge, the result of over-zealousness during the Cold War and that the Cold War is over, one should consider that many in the United States and the hemisphere look and see more of the same happening in Colombia where the same kinds of Special Forces advisors are carrying out the same kind of counterinsurgency training with the same light-infantry equipment with a repressive army engaged in the same kind of dirty war.

The feelings generated by the relationship between the United States and Israel are even stronger. Certainly a number of resolutions were introduced at the Commission during the last session highlighting abuses perpetrated by the Israeli government in which the United States found itself alone in opposition, but at least accompanied by a number of abstentions.

Another human rights area where the United States has fallen out of step with its allies is in its approach to the International Criminal Court. Of the one hundred and sixty countries that attended the Rome conference that drafted the statute establishing the International Criminal Court, 120 nations voted in favor of the Court. The United States was only one of seven countries voting against, although President Clinton did sign the Rome Statute moments before the signing-only deadline expired this past December. The current Administration's threat to find a way to remove the signature on the treaty does not display an understanding of human rights, much less human rights leadership, and does not endear the United States to the overwhelming majority in favor.

The opposition to the international Mine Ban Treaty is another example where the United States has not only ceded human rights leadership but become a part of the opposition. Since December of 1997, more than 130 governments have signed the treaty, but not the United States, insisting on maintaining production and stockpiles, despite the fact that it is one of only two NATO countries to do so. Rather than accompany its friends and allies, the United States insists on the company of nations such as Burma, China, Cuba, Iraq, North Korea, Russia, and Syria, among others.

The record in dealing with other international human rights instruments is equally unfortunate, whether the Senate's failure to ratify the Convention on the Elimination of All Forms of Discrimination Against Women or the Convention on the Rights of the Child, not to mention the Convention on Economic, Social, and Cultural Rights.

Unfortunately, in the arena of human rights, the United States has adopted positions that have alienated its allies and given more than enough intellectual ammunition to its opponents. But it would be bad enough if United States's missteps were limited to the human rights arena; unfortunately that is not the case.

#### BEYOND HUMAN RIGHTS

While the Senate's rejection of the Comprehensive Test Ban treaty was met with international condemnation, the decibel level was only a prelude to what has happened twice this year already. It is as if the current Administration seems intent on fully reaping an anti American backlash that began to manifest itself during the previous Administration. Not only has the Administration exacerbated the global displeasure with the United States on the very issues that had already generated antipathy, such as the threat to withdraw the signature from the International Criminal Court, but it has also found issues that its allies care even more about.

With both the March withdrawal from the Kyoto Protocol and the continuing threats of withdrawal from the 1972 Anti Ballistic Missile Treaty by the deployment of National Missile Defense, the Administration seems to believe it has unlimited political capital in a world that is less interconnected. Of course that is not the case.

Sharp high level protests and screaming headlines, even in tabloids, met the withdrawal from the Kyoto protocol, all around the world. The French environmental minister called the announcement irresponsible and scandalous. Japan and Australia were reportedly dismayed while the Chinese also called it irresponsible. The Swedish Environmental Minister summed the growing sentiment well when declaring that, "No individual country has the right to declare a multilateral agreement dead."

An even stronger reception is meeting the National Missile Defense initiative, with ally after ally warning that pursuing National Missile Defense is downright dangerous. Indeed, the Administration's "go at it alone" and "oppose the allies" approach is reaping precisely the kind of reward one would expect. It is as if the Administration had received an overwhelming electoral mandate to push allies and provoke potential enemies by waving one of the biggest red flags in their faces. Just how much longer the Administration expects to continue this approach is anyone's guess but the losing of the seat on the Commission is likely to be just one of several setbacks to come.

#### CONCLUSION AND RECOMMENDATIONS

The Commission vote should be viewed not only as increasing global concern about the United States own human rights record but also about its approach to foreign policy. The arrears on the United Nations dues certainly played a role in decreasing good will towards the United States. Current Congressional proposals to tie payment of the arrears to regaining the Commission seat will produce exactly the opposite effect intended, and again, alienate friends and give opponents more ammunition. Congress should heed the letter sent by human rights groups on this issue and the proposal should be allowed to quietly die.

Instead, the United States government must itself get back on course and readopt a multilateral approach to its foreign policy. Steps the United States should take to obtain a better working relationship with its friends and allies in general and the United Nations Human Rights Commission in particular include the following:

- The Administration must table the National Missile Defense initiative and revisit with the intent to amend its decision relating to the Kyoto Protocol.
- The United States should promptly pay all back dues to the United Nations.
- The Senate should ratify international human rights instruments such as the Convention to Eliminate All Forms of Discrimination Against Women; Convention on the Rights of the Child; and the International Covenant on Economic, Social, and Cultural Rights.
- The President should sign and the Senate should ratify the Mines Ban Treaty as well as the International Criminal Court (the House-passed measure attacking the ICC should be promptly labeled the War Criminals Protection Act and should not be supported by the Senate).
- Congress, perhaps this Subcommittee, should assume leadership and hold a series of hearings on human rights and US foreign policy around the world, evaluating the past, drawing lessons learned, and comparing that to current policy, perhaps on a regional basis.
- Congress should engage in a similar exercise examining different aspects of human rights compliance at home.

- The United States of America should abolish the death penalty, at federal and state levels.

Mr. SMITH. I do have one question and just a couple of observations.

Mr. Palmer, this will be to you. In your testimony, which I read very quickly, what is responsible for the Commission's failure to carry out its core mission—and you point out the determined and fairly organized efforts of what some have come to call the tyrants bloc, a coalition of human rights abusers that includes the post-despotic countries in the world. And I couldn't agree more with you.

When you talk about freedom caucuses, I think that is a marvelous idea that awaits implementation and further work. But part of the problem that I think all of us find within the democracies, one just by continuation—this is always a point and counterpoint—you never have that solidified view that a dictatorship has. The luxury of saying, this is the way it is going to be, and it is going to be that way.

But I also find the power of the almighty buck, or whatever the currency may be, to trump the human concerns and it becomes a footnote in the conversation. And the fight on PNTR, reasonable people took the other view, but, you know, after 1 year and 2 years and 3 years, how long do you have to have the experiment to say that the dictatorship is getting more powerful and more cruel, rather than less as we trade with China, which, unfortunately, has gotten worse every year in its human rights.

And while we need to proceed along that way on democracy caucuses and freedom caucuses, very often we are our own worst enemy, because we are looking at our own countries and our interests and we will be looking to make money. So that is one issue, if you will address that.

But the other—I think we need to lay a marker down, as one of the—Mr. Ackerly, you may have mentioned this or Ms. Shea—who will sponsor the China resolution next year? After you mentioned how they bullied Denmark—I think it was you that pointed it out—who is going to sponsor it?

I went around talking to members of the European Community, including the French, and asked the French Ambassador eyeball to eyeball, why aren't you cosponsoring? Sure, when all is said and done, you will vote for it, but you are sending a message that is being heard throughout the Commission by not cosponsoring. Who will be there next year to take that up? That is very, very disconcerting.

I think the arrearage issue, Mr. Salinas, in all due respect needs real context. We are the major donor, bar none, 35 times more than what the PRC provides, 5 to 10 times more than England, France or another country. We want real reform, and my bill, the Admiral James W. Nance and Meg Donovan Foreign Relations Act of 2000–2001, I am the prime sponsor of it. We have 30 pages or so of text dealing with U.N. reform that we would like to see go forward. Senators Biden and Helms worked in a bipartisan way to craft most of that. We do fully pay the arrearage, but we do think reform is important in order to—and now we have, with Hyde-Lantos, a brand new manifestation of concern with regards to the third tranche.

I found in dealing with my friends at the U.N. that they didn't have a clue how much we spent; and the fact that we get credit for about a fourth of all money we give to the U.N., whether it be direct or indirect, the voluntary contributions we make to groups like UNICEF, that is not found on the ledger. We are the prime donors of UNHCR and other specialized U.N. agencies at work. One out of every four, 75 percent of that money, we don't get credit for.

The arrearage—we are almost at \$2 billion a year—money you give to the U.N., if you count airlift and peacekeeping support, which costs the American taxpayer—I mean, the money, when you factor it all in, if it was all on paper it would dwarf what the EU and everyone else gives to the U.N. We never really get credit for that. And we did pony up the 926, but there are some conditions that need to be met, and I say that as passing.

I agree with you on prison reform. I think that is an area that is ripe. I read Human Rights Watch and other studies. I was on the Web today reading another one they have on rape and the prisons. It is an atrocity. It needs to be stopped.

Police brutality profiling, I know Ashcroft has made a point of saying profiling needs to be weeded out and eradicated wherever and whenever it rears its ugly head.

Freedom caucuses. Touch on any of those issues that I have touched on.

And, for the record, I am against the death penalty. I believe in the sanctity of human life, whether it be protecting unborn children from the violence of abortion or, as we had last year, the trafficking bill which would protect women from the rape and exploitation of these traffickers to the death penalty. I believe in the consistent approach to valuing life. I just throw that out.

Mr. PALMER. On the question of trying to get the—getting democracies to work together, certainly it is a vociferous movement. It is a difficult group. Democracy internationally is messy by definition.

But it is my own sense that if we were willing to sit down around a roundtable not only with the governments but also with NGOs and with international business—I am an international businessman. I have done over a billion dollars of investing in Eastern Europe. I have built 11 television stations. In every single country you can think of, my stations are number one in the market.

Ms. MCKINNEY. What kind of stations?

Mr. PALMER. Normal ABC-type commercial broadcast stations in Ukraine and Poland, et cetera. And businessmen are not the enemy. I am not the enemy. I was a freedom rider. We believe businessmen—believe we will do better under normal legal systems with transparency, et cetera.

What is missing is leadership to set out a new vision and to get everyone, all the democrats—small and big D's—everybody to sit around a table and work out some deals. Businessmen want to be assured that we are not going to be denied the possibility to invest. And I personally believe that investing and trading promotes democracy and human rights, rather than the reverse.

But the deal ought to be that we ought to get rid of the dictators. That is our number one objective. And we will develop a strategy and tactics, both inside U.N. bodies and, much more importantly,

directly in the countries, in support of the people in China and Burma and Saudi Arabia and everywhere to support women around the world in their struggle for equality and freedom. I think there is a basis for a consensus between all of the constituencies, but we have never tried. We have not had the courage to do the trade-offs that are required.

Mr. SMITH. Anybody else like to comment?

If I thought—who might take on—you talked about, earlier, Denmark, Ms. Shea. Who might take up the PRC issue?

Ms. SHEA. I don't know. Maybe John knows better than I.

I know we worked very hard in that delegation trying to get co-sponsors and weren't able to get a single one. So I can't imagine anyone sponsoring the Commission on the Commission. As I said in my testimony, they are the ones to benefit the most from our getting kicked off.

I would also like to just clarify for the record when I talk about economic rights, Carlos, yes, they are part of the universal declaration of human rights. These are individual rights, not governments, to development, which is what I was talking about. This is the right for individuals to form and join labor unions, trade unions. That is what is envisioned in the trade unions in the declaration.

What we are seeing now is the unachievable rights of development, not because development is unachievable. It is. It is not achievable the way it is envisioned and sketched out in these resolutions. That is the abolition of intellectual property. Dismantling of the intellectual property right protections is one way that is stated in this development resolution. Development is achievable if it is done to the rule of law, the independence of the judiciary, free press and so on. All the individual rights and protections that are outlined in the political rights part is probably the way you get to development.

So I am not saying—I am not dismissing the importance of economic rights. I am saying the way they are envisioned and crafted in these resolutions in the U.N. that they are just unattainable.

Mr. ACKERLY. In terms of a China resolution, I think it is important that if conditions don't improve for Chinese and Tibetans that the U.S. states its willingness to sponsor the resolution again, even if it doesn't have a seat on the Commission. You need a co-sponsor, but it is important that the United States say it is willing to sponsor even if we can't find a co-sponsor if conditions there don't improve.

Mr. SALINAS. If I may, this is a further argument for why Congress ought to stop giving China a free ride. And next time there is a vote before Congress on permanent normal trading relations, as I have heard through the media, I think this is a moment to say, well, you know China did not want to allow us to proceed in a normal body that looks at human rights. China blocked even consideration of the resolution year in and year out. And maybe the Chinese government doesn't understand any other way than a more forceful measure like voting against PNTR.

Mr. SMITH. Let me ask one final question. Then I will yield to my friend from Georgia.

Mr. Salinas, do you have concerns—you heard from me and others about the International Criminal Court, and yet we feel in a

very real way what has happened most recently on the U.N. Human Rights Commission really portends poorly for that court. If I were a dictator, I would do everything within my power to make sure I had representation both on the prosecutorial side and on the judge side and everywhere else in between to influence that court and to make mischief for those like the United States who might want to be engaging in peacekeeping activities.

Because, as we saw with UNPROFOR, it wasn't until IFOR, the NATO engagement, that the Balkans really became stabilized. UNPROFOR, which is also part of the arrears issue, was a cruel joke.

Look at Srebrenica. We held hearings on that. I met with people, and I am sure you have, too, who lost loved ones as the U.N. Blue Helmet troops, who very often distinguish themselves, did not at Srebrenica as they turned over to Milosevic men to go to their deaths, one of the terrible aspects of the history of the U.N.

And yet—so my point is, do you see any concerns? I mean, even the crimes are not defined yet. The Clinton Administration, which was against it but then signed it, as you know, at the very last minute, had grave misgivings about it, as do Bush and Powell and our current Administration. Will it not chill peacekeeping?

Mr. SALINAS. I think the key is that you are in a better position to influence the process if you are part of it than if you are standing outside of it. It is clear that the world is moving toward an International Criminal Court, that if the United States opts in or out, it is going to happen.

I think the points you raise are extremely valid, but I know also that the discussions leading up to the statute, the subsequent institutions are raising those concerns.

Do I have concerns about the ICC? I think I have concerns about the ICC as I do of any United Nations body, in fact, of any collective body. You are going to have problems that need to be ironed out. But I think that is one of the principal arguments why the United States should completely engage this process, rather than be outside and rather than try to torpedo it.

Mr. SMITH. Thank you.

Ms. McKINNEY.

Ms. MCKINNEY. I wasn't ready. I was looking back over my files here.

Several things that were in the written testimony that are interesting to me. One thing on this International Criminal Court is to put it down, is that it seems to me that we will be more exposed, that our servicemen would be more exposed if there were an International Criminal Court that we didn't participate in rather than us being less exposed. I am not an international lawyer, but it just seems to me that we ought to be involved rather than not being involved. Not being involved isn't going to make it go away. Our servicemen ought not be involved in human rights abuses anyway, and that is what the whole Kerrey thing is about. Certain actions are against the laws of all civilized nations.

Additionally, our servicemen are subject to international prosecutions anyway. We in our status of force agreements with various countries where our servicemen are, we relinquish the right and allow for local jurisdiction over their crimes as it were. So it is not



like it is an unheard of notion that we will allow other people to have jurisdiction over our people.

And then I would just say that with the subpoenas that have been issued asking Kissinger to appear in court in France and in Argentina, I think that bodes well for the course of international human rights decisions that are made by even people in Washington, DC, having to live with the results of their decisions.

Let me just get to the point so we can conclude.

Ms. Shea, you say in your testimony that you believe that the Europeans' action reflects the abandonment of their historical commitment to human rights. Why would you say that?

Ms. SHEA. Well, because they do not want to name names of countries. They are loath to do that.

I think the Chairman talked about the rapporteurs' reports having been chock full of information about human rights violations. These reports for the most part are excellent reports, but they are never discussed in plenary. No one ever takes them up and debates them and points out the problems in particular countries.

And the Europeans are essential partners to us, as I see it, in human rights. They are our bloc. And you cannot work effectively within the U.N., within this particular body without a bloc. If you don't have a bloc, you are lost. Your vote is worth nothing, and the other groups that do have strong blocs are very effective and efficient in the way they work.

So if you do not have the EU willing to discuss problems and name names and take action to help us in enlisting support for our specific resolutions, like on China—you know, the EU voted with us against China's no action motion to allow a discussion of China's record on the resolution. The resolution itself was never voted on. It was only a discussion about whether there should be a no action motion to block it or not which China introduced. The EU voted with us, yes, but they did nothing to help support the resolution itself; and we lost the no action motion anyhow.

So I think the EU—I am critical of the EU stance now, but I am, at the same time, very deeply appreciative on the role they have played historically with us. And we need them. I don't see how to make this game work at all in the UN in any fair way, whether in the International Criminal Court or here, without the EU working with us. And I don't see them working with us on these specific country resolutions when we get down to really the nitty-gritty, we are talking about a specific case.

Ms. MCKINNEY. You are specifically talking about on the Human Rights Commission but not in general.

Ms. SHEA. Right, I am just talking about the Human Rights Commission.

Ms. MCKINNEY. Mr. Palmer, your idea of a community of democracies was pretty interesting, and you refer to something like our team. Our team in the past has included Soeharto, Mobutu, you know, all of those folks; and today our team includes Uganda and Rwanda. Are they democracies?

Mr. PALMER. No, they definitely are not; and there were not in Warsaw those two countries in the meeting last June of 107 democracies that were there. There were, I would have to say, a few

countries that should not have been there, but, fortunately, Uganda and Rwanda were not.

I share with you—in fact, I joined the Foreign Service 36 years ago because I thought it was appalling that we supported dictatorships. I think it was equally appalling today that we support Saudi Arabia and the Gulf States and many other regimes that treat women like dirt, and they are basically feudal, and they need to be changed. So I share your support for an even standard here. We are not credible because we are not evenhanded.

Ms. MCKINNEY. We are absolutely—it is interesting when we talk about having these votes in private or at least the commitments to have the votes and then the votes dissipate. But this quote from the Human Rights Commission or from Honduras about Ambassador Negroponte—all about the human rights violation and he did nothing to stop them. Now, we are going to go to Honduras to ask them so support us on the Human Rights Commission.

I mean, you know, there is a reaction to some of policies that we carry out; and folks are entitled to react that way. So at least, at any rate, I think our policy ought to be a little bit more forward thinking when it comes to how we treat other people, because it does come back around. And this—we are to go a lot of hand-wringing here, but in the scheme of things this is minor compared to the policies that have been pursued by people in Washington, DC, with impunity.

If we look what is happening in Eastern Congo right now at the hands of the Clinton Administration and now the Bush Administration, to allow Uganda and Rwanda to go into the Eastern Congo to rape, pillage, steal and kill as they are doing and we continue to support them with World Bank financing, IMF financing and United States assistance, it is a shame, it is a crime, it is a travesty, and it seems to me that more people ought to get subpoenas other than Henry Kissinger.

Mr. PALMER. Could I say in response to that that I thought that Secretary Powell and I definitely do not work for the Administration, that Secretary Powell did precisely the right things on some of those issues during his recent trip. He started in Mali, a real democracy. He went to South Africa, a member of the Community of Democracies leadership with Mali. There are only nine nations leading the Community of Democracies, South Africa and Mali among them.

Ms. MCKINNEY. He also went to Kenya and Uganda.

Mr. PALMER. He attacked Daniel arap Moi to his face in private and then in public and said it is time for you to leave office. He said the same thing about Mugabe. We finally have a Secretary of State—

Ms. MCKINNEY. He went to Uganda. I don't know what he said in Uganda, but—

Mr. PALMER. No, no. I think he was very straight about stuff. I think he is a partner for you on these things for you and for me as well.

Ms. MCKINNEY. Well, I wouldn't dare suggest that Colin Powell would not be a partner on some of the issues that are important to me. However, Colin Powell is not the only person who sits in the room, and Colin Powell doesn't call the shots.

Mr. Salinas, I would like to have a few concluding words from you on U.S. human rights, domestic human rights and the attention that we need to pay. Amnesty did a wonderful, wonderful campaign on human rights in America, in the United States, and so could you just talk about how the other side of that double-edged sword is that we lose our credibility when we don't take care of our appropriate business here at home?

Mr. SALINAS. I think that a lot of issues that I highlight in the testimony that were highlighted by Amnesty International in its campaign against violations in the United States, by Human Rights Watch in the report on rape in prison, for instance, that the Chairman was alluding to are heinous acts that are not isolated, that one finds throughout the United States and which also attract a great deal of very positive attention from Members of Congress, both here at the national level but also at the State level, as well as public officials in the executive and the judicial branch.

To say that there are violations is not to say that no one cares in the United States, but it is to say that there is a lot of unfinished business. It is very uncomfortable. And I have seen it time and again in my short career here in Washington that Members of Congress will become very nervous when people talk about human rights violations in the United States—and I am not talking about the two of you—and even lash out. When Amnesty launched a campaign against violations in the United States, it was amazing some of the remarks we heard from our closest friends.

It is hard to look at these problems as violations because the first thing that we immediately imagine is a Falun Gong practitioner being tortured to death in a Chinese cell or we see a genocide or a chain saw massacre in rural Colombia.

Ms. MCKINNEY. But what I see, I see Amadou Diallo, I see the problem of the shooting of the young man in Cincinnati. I see a million black people in prison. I see two million Americans in prison. I see a disproportionate impact on the African American and Latino communities of policies that are enacted and people walk off and forget about them. I see the reaction of my colleagues right here in the Congress when Tony Hall introduces a resolution to apologize for slavery and folks laugh.

Mr. SALINAS. I agree there is a lot of work that is still before us. I have personally seen a youth who was immobilized by police officers get his head kicked by a police officer. And unfortunately I couldn't testify on it because I was far away. And I saw what happened when people were approaching the scene. They were told, "Do you want to talk with us downtown?" There is a lot of work that needs to be done, and there is a lot of healing that needs to happen.

And certainly the reaction to Mr. Hall was very telling. His resolution was short but eloquent. The reaction should not be a dismissive one. It should not be anything short of respectful listening and engagement.

So there is a lot of work that needs to be done here, and I think their insistence on human rights abroad is correct, their pushing on human rights in China is correct. It is admirable, as is attention to the human rights situation here and the scrutiny of allies like Saudi Arabia. It is outrageous that the Saudis are given a free ride.

So, again, I think there is a lot of work that needs to happen here at home with migrants, with communities of color, in different—both urban and rural communities. I mean, the situation along the U.S.-Mexico border is also an appalling one where people are basically indirectly herded into some of the most despicable places in Earth.

So these are situations that Congress does need to look at.

And I welcome your interest, and I hope and urge other Members, like the Chairman, who have always been supportive, to get more Members to pay attention to this, because it is a credibility issue around the world.

Ms. MCKINNEY. Thank you, Mr. Chairman.

Mr. SMITH. Thank you, Ms. McKinney.

As we conclude, I want to thank each of our witnesses. You have been very gracious with your time. It has been a very long hearing and very informative, and you have provided us with some meaningful insights. And I know all of the Members of the Committee are just very appreciative of that.

Let me just ask unanimous consent—some of the excerpts from a hearing that we had on the International Criminal Court last year, we had Clinton Administration witnesses, including our Ambassador, who is the lead negotiator in Rome, as a principal witness. I asked a series of questions about looking back, had we applied the standards and the definitions to the Dresden bombing, the Tokyo firebombing, events that happened in World War II, Korea, Vietnam and every other engagement we have had, what would they look like in terms of are they war crimes or not? And frankly the answers were very disconcerting.

I mean, Hiroshima, Nagasaki—I mean, how would they figure? And if we are really going to engage the International Criminal Court, it seems to me we had better know exactly what we are getting into, because it goes beyond just peacekeeping.

So I would ask unanimous consent that we include that, just because the membership issue and the participation issue, from my point of view—and maybe I am wrong—on the International Criminal Court parallels what we have just seen happen at the U.N. Human Rights Commission. And, you know, to have Libya or some other country that is an egregious violator, Sudan, name the country, politicizing the court as they have politicized the Human Rights Commission could lead to an advance of anarchy and dictatorship.

So without objection, that will be a part.

Thank you so much for your comments and your testimony.

[Whereupon, at 5:50 p.m., the Subcommittee was adjourned.]

## A P P E N D I X

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MATERIAL SUBMITTED FOR THE HEARING RECORD

# July 9, 2001, P. 15 The U.S. Is Out With 'In' Crowd

By JEANE KIRKPATRICK

The United States has been an active member of the United Nations Human Rights Commission from its founding in 1947. But last week the U.S. suffered a highly publicized defeat when it failed to win one of the three seats allocated to Western countries. Instead, three members of the European Union—France, Austria and Sweden—got the

seats. Various explanations have been offered for this defeat. Many emphasized the disagreement with U.S. policies on the Kyoto treaty on global warming, the International Criminal Court and the land mine treaty. Others pointed out widespread disagreement with the Bush administration's decision to construct a missile defense and abrogate the Antiballistic Missile Treaty with the now-nonexistent Soviet Union.

None of these discussions took account of the significant fact that, also last week, the U.S. candidate was defeated in his effort to win reelection to a seat on the International Narcotics Control Board. In that election, the 54 member states of the U.N. Economic and Social Council voted among 32 candidates to fill five vacancies. Three EU countries—Austria, the Netherlands and France—were elected, as were Peru and India.

In the case of both the Human Rights Commission and the Narcotics Control Board, the outcome was a surprise because the number of written confirmations of intended support for the U.S. candidate was substantially higher than the number of votes actually cast.

Rep. Henry Hyde (R-Ill.), chair of the House International Relations Committee, described the Human Rights Commission vote as "a deliberate attempt to punish the United States for its insistence that the commission tell the truth about human rights abuses whenever they occur." I think he's right. The U.S. habit of truth-telling in the United Nations about human rights violations was surely an important basis of some countries' decisions. So is the United States' regular opposition to unfair attacks on other members, such as Israel.

The records of repression matter as more and more governments that are themselves infamous human rights violators have managed

to get elected to the Human Rights Commission (thereby acquiring votes). These include Libya, Syria, Sudan, Sierra Leone and Uganda. China and Cuba also are members.

The ambassador of France has attributed the success of his country with the Human Rights Commission to the fact that France's foreign policy is founded on "dialogue and respect." By implication, the U.S. failure is based on their absence. China agrees. China has suggested that the time has arrived for the United States to "stop using human rights issues as tools to pursue its power politics and hegemonism." It will be possible to do that when China stops using its power to violate its citizens' human rights.

The U.S. has no friends among those countries that regularly repress their citizens. The vote in the Human Rights Commission makes one wonder if the U.S. has reliable friends and allies among the democracies.

There is not much question that the distance between the U.S. and its NATO allies has grown in the last decade. The European press shows its displeasure in a steady stream of articles critical of the United States and the "American way." The criticism has intensified since the inauguration of President Bush, who undertook to move the United States rightward at a time when all but two of the 15 member EU states have socialist governments.

I think it is clear that the rapid consolidation of the EU already has had a negative impact on U.S. relations with several continental European countries in the United Nations. Traditionally, the United States has had close relations with some, but not all, EU members, but now it has become difficult for a U.S. representative to discuss an issue or make common cause with a representative of an EU country.

There is a widespread belief among informed Americans that our allies played a significant role in the U.S. defeat in the Human Rights Commission. The U.S. will never be able to achieve or even work toward our goals in the U.N. if, in addition to opposing our adversaries, we must also compete with our best friends. Our one vote can never win against the EU's 15.

Jeane Kirkpatrick was U.S. ambassador to the United Nations during the Reagan administration.

LOS ANGELES TIMES

Commentary



RANAN R. LURIE / New York City

JEANE KIRKPATRICK

# Europe's hand . . . in eviction at the

U.N.

The United States has been an active member of the United Nations Human Rights Commission from its founding in 1947. But last week, the United States suffered a highly publicized defeat when it failed to poll the votes needed to win one of the three seats allocated to Western countries. Instead, three members of the European Union (EU) won the seats allocated to the Western Group (WEOG, as it is called in U.N. circles): France with 52 votes out of a possible 54, Austria with 41 votes and Sweden with 32. The United States, trailing with 29 votes, was eliminated.

In subsequent days various explanations were offered for this defeat. Many emphasized the widespread disagreement in the world today with various U.S. policies, including the Kyoto Treaty, the international Criminal Court and the Land Mine Treaty. Others pointed out widespread disagreement with the Bush administration's decision to construct a missile defense and abrogate the ABM Treaty with the now nonexistent Soviet Union.

None of these discussions took account of the significant fact that, during the same week, the U.S. candidate, Ambassador Herbert Okun, was defeated in his effort to win reelection to a seat on the International Narcotics Control Board. In that election, on May 3, the 54 member states of ECOSOC (Economic and Social Council) voted among 32 candidates to fill five vacancies without regard to regional distribution. Once again, three EU countries — Austria, Netherlands and France — were elected as were Peru and India.

In the case of both the Human Rights Commission and the Narcotics Control Board, the outcome was a surprise since the number of written confirmations of intended support for the U.S. candidate was substantially higher than the number of votes actually cast.

Some observers in and out of the United Nations explained the failure of the United States to win a Human Rights Commission seat as a consequence of its hard-hitting

human rights policies, especially this year, when American delegates spearheaded efforts to discuss repression in both China and Cuba. This, of course, is what a Human Rights Commission should discuss.

Rep. Henry Hyde, Illinois Republican and chairman of the House International Relations Committee, described the vote as "a deliberate attempt to punish the United States for its insistence that the commission tell the truth about human-rights abuses whenever they occur." I think he's right. The U.S. habit of truth-telling in the United Nations about human rights violations was surely an important basis of some countries' decisions. So is the U.S.'s regular opposition to unfair attacks on other members — such as Israel.

The records of repression matter as more and more governments that are themselves infamous human-rights violators have managed to get elected to the Human Rights Commission (thereby acquiring votes), e.g., Libya, Syria, Sudan, Sierra Leone and Uganda. China and Cuba are also members.

The ambassador of France has attributed the success of his country in the Human Rights Commission to the fact that France's foreign policy is founded on "dialogue and respect." By implication, the U.S. failure is based on their absence. China agrees. China has suggested that the time has arrived for the United States to "stop using human-rights issues as a tool to pursue its power politics and hegemonism." It will be possible to do that when China stops using its power to violate its citizens' human rights. I hope that U.S. policy remains based on empathy for the repressed.

The United States has no friends among those countries that regularly repress their citizens — and

not many friendly associates.

The vote in the Human Rights Commission makes one wonder if the United States has reliable friends and allies among the democracies.

There is not much question that the distance between the United States and its NATO allies has grown in the last decade. The European press shows its displeasure in a steady stream of articles highly critical of the United States and the "American way." The criticism has intensified since the Inauguration of George W. Bush, who undertook to move America rightward at a time when all but two of the 15 member states of the EU have socialist governments.

I think it is clear that the rapid consolidation of the EU already has had a negative impact on U.S. relations with several continental European countries in the United Nations. Traditionally, the United States has had close relations with some — but not all — EU members, but now it has become difficult for a U.S. representative to discuss an issue or make common cause with a representative of an EU country.

There is a widespread belief among informed Americans that our allies played a significant role in the U.S. defeat in the Human Rights Commission. It is a fact that if either Sweden or Austria had stepped down in favor of the United States, we would have won a seat. That is how friends, allies and affinity groups operate in the United Nations to achieve common cause.

The United States will never be able to achieve or even work toward our goals in the United Nations if, in addition to opposing our adversaries, we must also compete with our best friends. Our one vote can never win against the EU's 15.

*Jeane Kirkpatrick was the U.S. ambassador to the United Nations during Ronald Reagan's presidency. Copyright 2001, Global Viewpoint. Distributed by Los Angeles Times Syndicate International, a division of Tribune Media Services.*



*The vote in the Human Rights Commission makes one wonder if the United States has reliable friends and allies among the democracies.*

*A. P. M. C.*

The Washington Times

Commentary

14 / THURSDAY, MAY 10, 2001 \*

## THE INTERNATIONAL CRIMINAL COURT

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### HEARINGS

BEFORE THE

### COMMITTEE ON INTERNATIONAL RELATIONS HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

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#### *[Selected Excerpts]*

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Mr. BEREUTER.

It is my pleasure now to call on the gentleman from New Jersey, who is the Chairman of the Subcommittee responsible for oversight of Americans' involvement in international organizations, the gentleman from New Jersey, Mr. Smith.

Mr. SMITH. Thank you very much, Mr. Chairman.

Mr. Chairman, the concept of a permanent International Criminal Court charged with prosecuting the gravest of crimes against humanity is not a new one. The idea was proposed and dismissed after the conclusion of the Nuremberg and Tokyo War Crime Tribunals that followed World War II.

In recent years the idea has gained new momentum, driven largely by memories of the horrific crimes committed in Rwanda and the former Yugoslavia. I share the ideals of many ICC supporters. If we could construct an entity that would impartially prosecute only genocidal tyrants and war criminals I would support it without hesitation, but we do not inhabit an ideal world. The difficulty is in devising a system that will prosecute Pol Pot but not President Clinton, that will indict Ratko Mladic but not Norman Schwartzkopf.

I am concerned that the Rome Statute of the International Criminal Court fails to accomplish that goal and that it is susceptible to serious abuse and manipulation.

As it took form, the draft statute ballooned from an instrument focused on well-established war crimes into an encyclopedia of still-emerging human rights law. The resulting statute is a 30,000 word document that covers 77 pages. It contains sweeping language that leaves many elements of vaguely defined crimes up to the imagination of international lawyers.

For example, according to article VI the crime of genocide includes, "causing serious mental harm" to members of a, "national, ethnic, racial or religious group."

It is true that similar language is contained in the Convention against Genocide, but the United States took a reservation to the jurisdiction of the World Court over the definition of genocide. This



is not because we intend to commit genocide, but because the United States was unwilling to surrender its sovereignty to a body that might be manipulated by hostile parties using the vague language of the convention as an ideological hobbyhorse.

Similarly, article V asserts ICC jurisdiction over the, "crime of aggression"—an offense that is not defined in international law or even in the Rome Statute itself, a point that I made repeatedly at the OSCE parliamentary assembly in Bucharest earlier this month. In the context of domestic law, such vagueness would be problematic. In the more combative context of international law it is dangerous.

In addition to the problems posed by its vague definitions, the statute also claims a jurisdictional reach that is without precedent. Once 60 countries have ratified it, the statute claims ICC jurisdiction over any defendant who may have committed a crime in a signatory state regardless of whether the defendant's own state had ratified the treaty. By claiming to bind the subjects of non-signatory states, this self-executing, potentially universal jurisdiction directly challenges traditional concepts of national sovereignty.

Finally, the Rome Statute gives the ICC prosecutor a vast amount of personal power with a minimum amount of oversight. The statute drafters rejected a U.S. proposal that the prosecutor only be allowed to proceed on cases referred either by a sovereign state or by the U.N. Security Council. Instead, the ICC prosecutor may initiate investigations and prosecutions on his own authority without control or oversight by any national or international party.

Under article 44, the prosecutor may also accept any offer of, "gratis personnel offered by nongovernmental organizations to assist with the work of any of the organs of the Court."

I have long been a supporter of the important work undertaken by International NGO's, particularly relating to the protection of human rights and the provision of humanitarian relief, but it is also true that there exist hundreds of highly ideological NGO's who look to international bodies to promote agendas that go far beyond the domestic political consensus in their home countries. The combination of the independent prosecutor's extreme discretion with staff provided by well-funded extremist NGO's could lead to serious problems and partisanship by the ICC. These are but a few of the problems that I have with the present form of the Rome Statute.

I readily acknowledge that many, probably most, ICC supporters do not intend for the Court to be used as a club for U.S.-bashing or as an engine or radical social engineering, but once the ICC is established it will take on a life of its own. Its activities will be restricted by the language of the Rome Statute itself rather than by the best intentions of its most responsible supporters, and I just would say finally, Mr. Chairman, as you know, I take a back seat to no one in promoting—in the past and present—both the Rwanda War Crimes Tribunal and the International War Crimes Tribunal for the Balkans.

When we were holding early hearings in our subcommittee as well as on the Helsinki Commission I offered language and amendments to boost the U.S. donation to those important tribunals and so I take a back seat to no one, but this I think has some very real problems that need to be addressed. I yield back.

Mr. SMITH [presiding].

Let me ask a few questions and then I will yield to my friend, Mr. Berman, if he has any further questions.

You mentioned checks and balances that exist within the Yugoslavian War Crimes Tribunal. Do those same checks and balances also exist in the Rome Statute?

Ambassador SCHEFFER. Congressman, there are many more checks and balances in the ICC statute, and I can go into some of those. But the power of the prosecutor is much more qualified within the ICC statute. The principle of complementarity, which is nowhere found in the Yugoslav or Rwanda Tribunal statutes is a central feature of this particular Court.

And, furthermore, this Court, the ICC, depends upon the states parties to the Court to actually make very important decisions relating to the Court, whereas, the Yugoslav and Rwanda Tribunals look to no governments whatsoever for their decisionmaking.

Mr. SMITH. Let me ask you what kind of checks and balances there are. In terms of elected officials, our Founding Fathers, I

think, were right in vesting only limited power in each of the three branches, being so distrustful, as they were, of any single entity being given so much power. Power corrupts, and absolute power corrupts absolutely.

What happens if a prosecutor and/or judges were to run amok and to engage in an ideological crusade against certain individuals? I think we already have a shot across the bow when lawyers brought action against NATO for alleged war crimes, that our planes were flying too high, putting additional civilians at risk, the choice of targets, which they seem to disagree with. A war crime then potentially could be in the eye of the beholder. Because, again, I do think there is some true elasticity to these terms.

Yes, Mrs. Del Ponte did not accept and did not proceed on those charges, but some other prosecutor may not be so favorably inclined. You might want to comment on that. Looking back, if the Rome Statute were in effect during World War II, for example, and we dropped the bomb on Hiroshima and Nagasaki, and we did the firebombing of Dresden and the other German cities with a huge number of civilian casualties, would that be construed as a war crime under the plain meaning of the Rome Statute?

Ambassador SCHEFFER. Well, Congressman, it is far too speculative to try to get into that. Remember that during World War II, the question is, were those actions violations of codified or customary international law at that time?

Mr. SMITH. That is not the question I am asking.

Ambassador SCHEFFER. No, I know.

Mr. SMITH. Fast-forward those military actions that this country undertook with our Alliance.

Ambassador SCHEFFER. It is entirely speculative to say we would use exactly the same military tactics today as we did during World War II. I would not speculate in that direction, not at all. We are far more precise—

Mr. SMITH. But there is no doubt a reasonable man or woman could use the Rome Statute in cases analogous to matters of historical fact, where military decisions were made which resulted in huge casualties. Thankfully, at least, the consequence of Hiroshima and Nagasaki was the ending of the war. But there is an argument that has been made ever since as to the advisability of those actions.

I think it is a fair question. Past is prologue. We may be faced with this in the future. We all know that NATO, in terms of its war doctrine, would rely on superiority, at least during the Soviet days, rather than quantity. Quality was what we would rely on. There is the potential that a United States President, or a French President, or a British Prime Minister may have to make a decision some day to use nuclear weapons. It is not beyond the realm of possibility and it is not highly speculative. Those things have to be thought through.

Since we have the historical record, I think it needs to be plugged in to see whether or not this would have triggered a war crimes prosecution.

Ambassador SCHEFFER. Well, we were careful in the drafting of the statute, as well as the elements of crimes, to establish very high barriers to actually launching investigations and prosecuting

the crimes. Not isolated incidents, there has to be systematic widespread events. There have to be plans and policies to directly assault civilian populations. If military necessity dominates the reasoning behind the use of any particular military force, then that is in conformity with international law and it is in conformity with the statute.

But if you are asking me, speculate as to whether or not it can conceivably be drawn that the United States takes a particular type of military action without describing what the intent was behind it, the plan or the policy behind it, I can't answer questions like that because you have to go through every step of the analysis before you can answer whether or not this statute would actually apply to that particular use of military force.

Mr. SMITH. Well, one of the more perverse outcomes would be that our military strategists would be faced with factoring in not just what is in the best interests of the United States and our allies, and how are we more likely to achieve a military end to a conflict. They would also have to factor in whether or not such an action would violate the Rome Statute.

Let me also say, our nuclear doctrine rests on deterrence, and if the Russians were to attack us or to launch, we would destroy Russian cities. How would that fit into a Rome Statute world?

Ambassador SCHEFFER. Congressman, this statute, as I said, specifically provides very high barriers that have to be met.

Mr. SMITH. But crimes of aggression aren't even defined yet.

Ambassador SCHEFFER. And it is contrary to U.S. Federal law as well as the Uniform Code of Military Justice to violate the laws of war. So I would assume the plan or policy of the United States would not be to violate the laws of war. If it were the plan or policy to violate the laws of war, then we have a lot to answer for. But if it is not the policy to violate the laws of war, there should be symmetry between our actions and what has been set forth in the statute, which we agree with.

We agree that the crimes set forth in the statute are crimes under customary international law which we must adhere to. We are not disagreeing with what is in the statute in terms of the list of crimes, we agree with them. They must be complied with.

Mr. SMITH. And again, signing a document that still has not defined crimes of aggression—

Ambassador SCHEFFER. And by the way, I noticed that in your opening statement. I did want to get back to you on that. The whole process in the Preparatory Commission now is to try to determine, can there be a definition for aggression? The crime of aggression is not actionable under the statute unless there has been an agreement among the states parties to the statute at the 7-year review conference as to what is the definition of that crime. So you can't—there is no way to prosecute that crime until such a definition has been arrived at. And we have a very significant coalition of governments in total agreement with us as to how to proceed in those talks to define the crime of aggression.

Interestingly enough, under the statute, if one is a state party to the statute, you have every right, if a new crime is added to the statute, to completely exclude yourself from the coverage of that crime.

Mr. SMITH. Mr. Slocombe, Secretary Slocombe, if you could respond to the hypothetical posed earlier about not just our deterrence strategy, which is based on the obliteration of cities, unless something has changed there that I don't know about, but also the bombing of Hiroshima, Nagasaki, and the firebombing that took place in Germany. If the Rome Statute were in effect, would that have precluded those actions?

Mr. SLOCOMBE. Mr. Smith, I think the way I would answer that would be to say that, in our view, if the Rome Statute were properly applied, American military personnel or the political officers, the President and, I guess in those cases, the Secretary of War, the Secretary of the Navy who ordered operations could not properly be prosecuted under them because they were legitimate. In the case of Hiroshima and Nagasaki, and, indeed, in general, with respect to the strategic bombing campaign against both Japan and Germany with conventional weapons, I would maintain that, judged by the context in which they occurred, they were not violations of the law of war under any circumstances.

So that, as a lawyer, the way I would answer the question would be that the United States would have a good defense if such cases were, in your case, hypothetically tried.

What I am concerned about, what the United States is concerned about, is that there could be a politically motivated prosecution based on what would, in our view, be a misinterpretation of the law of war, and, therefore, a misinterpretation of the Rome Statute. And once one is in a court, once you concede the principle of jurisdiction, there are no guarantees as to the result.

Mr. SMITH. So it would be possible that a Hiroshima, Nagasaki type action or the firebombing in Japan and in Germany could be prosecuted in the future if such a thing were—

Mr. SLOCOMBE. As we have said repeatedly, our concern in respect of this statute, in respect of the Court, is precisely the concern about politically motivated, in effect, bad faith prosecutions. Exactly.

Mr. SMITH. But what about a good faith prosecution, by someone who honestly believed that Hiroshima was a war crime? I mean it is possible that it could happen?

Mr. SLOCOMBE. Well, there is no question that on its face, the Court has jurisdiction over actual "war crimes". That is what the statute says, that is what is intended. Our concern, the United States military, through the United States military justice system, prosecutes and prosecutes vigorously well-founded allegations that American military personnel have violated the law of war.

We do not need the International Criminal Court to deal with that problem. So that is a non-problem. Our concern is not that there would be valid prosecutions of American military personnel. Our concern, rather, is, as I said, and as we had said repeatedly, our concern is with politically motivated prosecutions based not really on serious allegations of war crimes, but on disagreement with U.S. or other alliance policies, of which I think the rejected allegations with respect to Kosovo are a good example.

Mr. SMITH. Could I ask, and ask you to provide it for the record, that the Pentagon undertake an analysis as to whether or not Rome would apply to World War II actions like I mentioned before?

Ambassador Scheffer, I think if these other issues were ironed out, you probably would like to see us sign this. But we have got to know what we are heading toward, and we need to look back before we look forward. Such an analysis, if it hasn't been done, really should be done.

Mr. SLOCOMBE. It has been done, that is the reason we opposed the treaty.

Mr. SMITH. What has been done, a look back at past conflicts?

Mr. SLOCOMBE. Well, I don't know that anyone did it in the mind of saying Dresden could have been prosecuted, I think they did it in the mind of saying you don't have to go back to World War II or to the Vietnam War to say that there is a very real danger that there could be politically motivated prosecutions through the International Criminal Court, and that is precisely the reason that not just the Department of Defense, but the Administration voted against the text and have refused to sign the treaty.

Mr. SMITH. And Ambassador Scheffer, you agree with that, there could be politically motivated prosecutions?

Ambassador SCHEFFER. Precisely.

Mr. SMITH. I'm sorry?

Ambassador SCHEFFER. Yes. Yes.

Mr. SMITH. Do you, Ambassador Scheffer, personally think that President Clinton made a mistake when he decided against signing the treaty in 1998?

Your mike is not on.

Ambassador SCHEFFER. I'm sorry, Congressman. My answer to your other question was yes.

Mr. SMITH. OK. Thank you.

Ambassador SCHEFFER. No, there was no mistake whatsoever. In fact, the issue of signing was simply not the issue. In Rome it was, do we agree with other governments to release the text of the statute out of the Rome Conference in the form that existed at the end of the conference? That was the only issue there.

It truly is a more responsible course to take not to consider even the issue of signing until one sees the totality of this treaty regime.

Mr. SLOCOMBE. If I could, Mr. Chairman, could I read a sentence from a letter which Secretary Cohen, with the concurrence of his colleagues in the senior levels of the Administration, sent in support of Ambassador Scheffer's effort, which responds exactly to your point? It reads, "As it currently stands, the Rome Treaty could expose servicemembers and Government officials of nonparty states to criminal liability based on politically motivated charges brought by other states that object to the nonparty states' international policies." That is our position and that, in a sentence, is the reason for our concerns.

Mr. SMITH. Let me ask a final question or two. Ambassador Scheffer, how likely do you really think it is that you will succeed in your efforts to get the ICC to forego criminal jurisdiction over Americans and persons from other countries that are not a party to the Rome Statute? And what happens if you fail? Obviously there are a different set of diplomats and parliamentarians that I was meeting with, but at the Bucharest Conference we were all alone in our opposition. I was amazed in speaking one-on-one during the course of the week in Bucharest at the OSCE Parliamen-

tary Assembly at how Pollyanna-ish some of the views were of members who did not have a clue what was contained in the statute but just said "We want an ICC and that is it." The British were probably more emphatic than anyone, although they seem to have been informed and knew the contents of the statute. They were vigorously pushing for rapid ratification, which is what the operative language was that they were offering.

The Germans offered it. We tried to weaken it with an amendment and it was not acceptable, regrettably. It seems as if, as Mr. Bereuter pointed out earlier, in terms of a willingness to just cede sovereignty, the Europeans have no problem with that, it seems. But obviously we do.

What is the next step if they do not include us—or exclude us, I should say—from jurisdiction? What would be the next step?

Ambassador SCHEFFER. Well, I think there will be some—let me just describe it as serious results if we cannot prevail with a provision or a document that is satisfactory to us in the Preparatory Commission talks.

I think as Under Secretary Slocombe said earlier we are going to have to take a very serious reassessment of this. I think there is going to be a clearer assessment as to what we can consider in terms of military contingencies for this Government, but at the same time I would hope that that assessment could, the fact that there would be such an assessment would encourage a good number of governments, particularly our allies, that they have far more to gain from this process from the United States being a cooperative partner in this Treaty, even as a nonparty, than they do to isolate us by not taking into consideration the very specific requirements that we have in the international community, so all I can say is I hope I can succeed.

I don't want to pretend to say that I have got an easy job ahead of me. Right now the deck is stacked against me, but we have to try. This is a step-by-step process. We have had to exercise some patience in getting there, but every time we have pursued our objectives since Rome to actually accomplish what we need to accomplish, we have accomplished it, so I want to go that final mile and see if we can accomplish this objective.

Mr. SMITH. Again, what is the likelihood of doing it? I mean Secretary Bolton and—

Ambassador SCHEFFER. It could be 50–50 at this stage.

Mr. SMITH. Secretary Bolton and Eagleburger, former Secretary of State, have made it clear that they thought we lost the fight 2 years ago.

Ambassador SCHEFFER. Well, as I said, we simply do not share their vision of either having lost or waging this campaign. I think you have to be in the trenches of it to recognize that other governments truly do not want, at least many other governments, truly do not want to see the United States walk out of this process. They know how valuable we can be in the long-run for this Court and therefore I would hope that we could persuade them that a reasonable accommodation within the Treaty regime of U.S. interests is going to be to the betterment of the entire process and to the Court itself.

Mr. SMITH. I would respectfully suggest that we did lose it 2 years ago. We are trying to fix it now, and I obviously wish you success. We all would wish you success on that, but, you know, you mentioned serious repercussions or serious consequences. I think we are more likely to avoid that if we are very specific in saying this or that happens. Predictability I think is your friend now. Can you elaborate on some of the consequences if we lose?

Ambassador SCHEFFER. Well, as we have already stated to our colleagues in other governments in letters that the Secretary of Defense has sent to his counterparts, we would have to re-evaluate our ability to participate in military contingencies if we cannot prevail on that, and I think that is a fairly powerful consequence.

In addition to that, I think governments truly are having to gauge what is the consequence if the United States cannot be a good neighbor to this treaty. It will severely cripple the operation of this Court if we cannot be a player in it.

Mr. SMITH. How would it affect peacekeeping in your view, and Mr. Slocombe, you might want to add your views on peacemaking as well?

Ambassador SCHEFFER. I think it could have a very severe impact on that. Walt?

Mr. SLOCOMBE. What the Secretary of Defense said in his letter was unfortunately a negative result—that is, a negative result with respect to the article 98 effort—could have a major impact on our decision whether to participate in certain types of military contingencies.

That is what he said. I would not see that as an absolute judgment that we will never send American troops overseas in any situation, but it would have to be a factor we would have to take into account.

Mr. SMITH. Just getting back to the legislation, and I know in its current form you have made it clear you don't support it, but can you not at least admit there is some value in again broadcasting to the world that we are very serious and that the Congress is very serious about there being very negative consequences if this thing proceeds and we are included, having not been made a party to it, having not ceded or signed it?

Ambassador SCHEFFER. Well, I think there is some value to it and the mere existence of the legislation I think has sent that signal very loudly and clearly.

What I am saying is that actual adoption of this legislation would then have the reverse effect on our ability to actually negotiate our common objective.

Mr. SMITH. Let me just take that one step further. I mean the President obviously would have the capability of vetoing the bill if he thought it was not the right vehicle.

But let me point out that the Congress also has prerogatives, and we do fund peacekeeping. We obviously provide the necessary and requisite moneys for our military. It seems to me that we need to be very much a part of this because the outcome could be a disaster going forward for the world and for U.S. men and women in uniform who may be deployed overseas.

As I have read this, and I have read just about everything I can get my hands on, I have grave concerns. I said at the outset that

no one has been more favorably inclined toward ad hoc tribunals than I am. When we had the first hearings in the Helsinki Commission on what became the Yugoslavian Tribunal we were being told by its leader, the man that was charged by the United Nations to take on the responsibility, that it was designed to fail, that he had been given insufficient resources, that it was nothing but fluff in order to placate certain individuals in countries, but it really was not a serious effort.

Now if we go in the other extreme and all of a sudden pass or enact something that potentially could prosecute the President or our Secretary of State or Defense or Supreme NATO Allied Commander, I think we have erred significantly as well, and I don't think there has been enough vetting of this issue.

I think a very small group of people have decided this. As I mentioned earlier, you know, I really want to take a look at who the actual participants were. We have heard that NGO's were filling the seats and taking on the responsibility of negotiating rather than the respective governments, who were kind of like brushed aside and the designated hitters were making decisions. That is serious if that indeed turns out to be the case. So I think there has been far less scrutiny brought to this, and hopefully these hearings are the beginning of even more focus by the Congress, but I thank you for your testimony.

Mr. Tancredo is here. Do you have any comments?

Mr. TANCREDO. No.

Mr. SMITH. I do thank you for your comments. We look forward to working with you in the future.

Ambassador SCHEFFER. Thank you, Mr. Chairman.

Mr. SLOCOMBE. Thank you, Mr. Chairman.

[Whereupon, at 11:51 a.m., the Committee was adjourned.]